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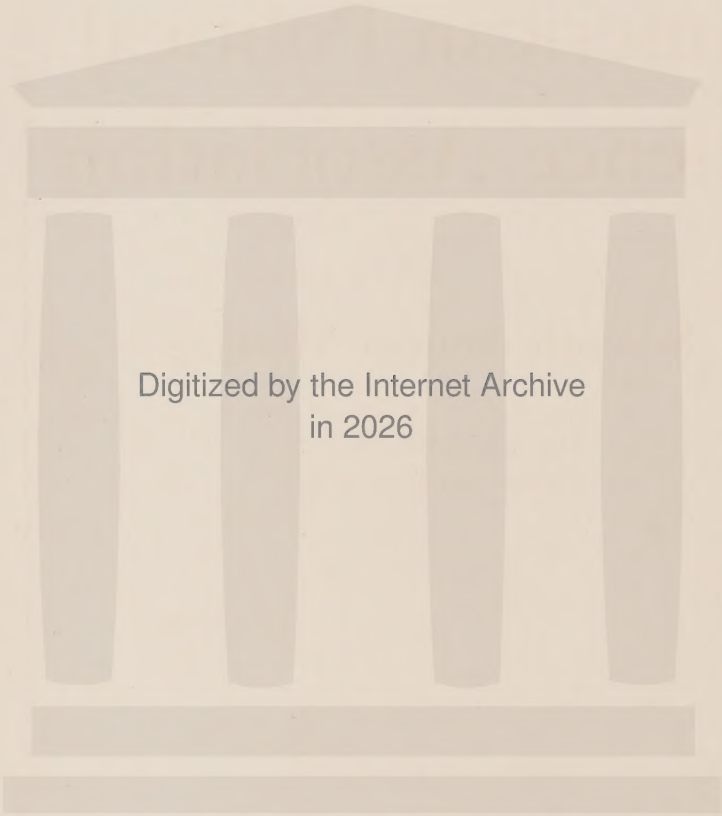
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Proceedings

of the

American Political Science Association

at its

Seventh Annual Meeting

held at St. Louis, Missouri,
December 27–30, 1910

DR. NORMAN A. WIGGINS

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* The address of President A. Lawrence Lowell, entitled "The Law and The Facts," and that of Prof. W. J. Shepard, entitled "Tendencies Towards Ministerial Responsibility in Germany," have appeared in The American Political Science Review for February 1911. The address by Prof. G. G. Wilson, entitled "Aerial Navigation" will appear in a later issue of the Review.

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CONSTITUTION OF THE AMERICAN POLITICAL SCIENCE ASSOCIATION

ARTICLE I—NAME

This Association shall be known as the American Political Science Association.

ARTICLE II—OBJECT

The encouragement of the scientific study of Politics, Public Law, Administration and Diplomacy.

The Association as such will not assume a partisan position upon any question of practical politics, nor commit its members to any position thereupon.

ARTICLE III—MEMBERSHIP

Any person may become a member of this Association upon payment of Three Dollars, and after the first year may continue such by paying an annual fee of Three Dollars. By a single payment of Fifty Dollars any person may become a life member, exempt from annual dues.

Each member will be entitled to a copy of all the publications of the Association issued during his or her membership.

ARTICLE IV—OFFICERS

The officers of this Association shall consist of a President, three Vice-Presidents, a Secretary and a Treasurer, who shall be elected annually, and of an Executive Council consisting ex-officio of the officers above mentioned and fifteen elected members, whose term of office shall be three years. These elected members shall be divided into three groups of five each, the term of members of one of such groups expiring each year.

All officers shall be nominated by a Nomination Committee composed of five members appointed by the Executive Council, except that the officers for the first year shall be nominated by a committee of three to be appointed by the chairman of the meeting at which this Constitution is adopted.

All officers shall be elected by a majority vote of the members of the Association present at the meeting at which the elections are had.

ARTICLE V—Duties of Officers

The President of the Association shall preside at all meetings of the Association and of the Executive Council, and shall perform such other duties as the Executive Council may assign to him. In his absence his duties shall devolve successively upon the Vice-Presidents in the order of their election, upon the Secretary and the Treasurer.

The Secretary shall keep the records of the Association and perform such other duties as the Executive Council may assign to him.

The Treasurer shall receive and have the custody of the funds of the Association, subject to the rules of the Executive Council.

The Executive Council shall have charge of the general interests of the Association, shall call regular and special meetings of the Association, appropriate money, appoint Committees and their chairmen, with appropriate powers, and in general possess the governing power in the Association, except as otherwise specifically provided in this Constitution. The Executive Council shall have the power to fill vacancies in its membership occasioned by death, resignation or failure to elect, such appointees to hold office until the next annual election of officers.

Five members shall constitute a quorum of the Executive Council, and a majority vote of those in attendance shall control its decisions.

Ten members shall constitute a quorum of the Association and a majority vote of those members in attendance shall control its decisions.

ARTICLE VI—Resolutions

All resolutions to which an objection shall be made shall be referred to the Executive Council for its approval before submission to the vote of the Association.

ARTICLE VII—Amendments

Amendments to this Constitution shall be proposed by the Executive Council and adopted by a majority vote of the members present at any regular or special meeting of the Association.

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Woodward, Frank E., 93 Rockland Ave., Malden, Mass.
Woodward, S. W., 2015 Wyoming Ave., Washington, D. C.
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Young, Hugh, Waln and Grant Sts., Wellsboro, Pa.
Young, H. O., The Portland, Washington, D. C.
Young, J. S., University of Minnesota, Minneapolis, Minn.
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REPORT OF THE SECRETARY

of the

American Political Science Association

The Seventh Annual Meeting of the Association was held in the rooms of the Southern Hotel at St. Louis, Missouri, December 27-30, 1910. The presidential address by Hon. Woodrow Wilson, Governor-Elect of New Jersey, was entitled The Law and the Facts, and was published in the February, 1910, issue of THE AMERICAN POLITICAL SCIENCE REVIEW and, therefore, is not republished in this volume. The other addresses, with the exception of two, which will appear in the REVIEW are here printed.

The regular annual meeting of the Executive Council as provided for by the Resolution of the Council of December 28, 1906, was held at the City Club, New York City, November 26, 1910. Only routine matters were considered, the general policy of the Association being discussed, and the programme for the Seventh Annual Meeting as drawn up by the Committee on Programme, approved.

At a meeting of the Council held December 28, 1910, at the Southern Hotel, St. Louis, a resolution was adopted expressing the great interest of the Association in the meeting of the Pan-American Scientific Congress to be held in Washington in October, 1912, and declaring its willingness to coöperate in making that gathering a success.

At the annual business meeting of the Association, held in the Southern Hotel, St. Louis, December 29, 1910, the Secretary reported that the Association had continued rapidly to increase its membership, the total enrollment, including subscriptions, at the time approximating thirteen hundred and fifty.

The treasurer reported that for the first time since the beginning of the publication of the REVIEW, the receipts of the Association for the year had equalled its expenses.

The following officers of the Association for the year 1911 were elected: President, Simeon E. Baldwin; First Vice-President, Albert

Bushnell Hart; Second Vice-President, Emlin McClain; Third Vice-President, Ernst Freund; Secretary and Treasurer, W. W. Willoughby. As members of the Executive Council to serve for three years were elected, Stephen Leacock, Charles McCarthy, Isidor Loeb, C. H. McIlwain, and T. F. Moran. A. R. Hatton was elected to fill out the one year of the unexpired term of W. B. Munro, resigned. Following the election of officers there was a general discussion as to policy of the Association with reference to the programme of its annual meetings, which resulted in the adoption of a resolution recommending that, when feasible, opportunity for the general and informal discussion of the papers read should be provided for.

The decision as to the place for the next annual meeting of the Association was left in the hands of the Executive Council.

REPORT OF THE TREASURER FOR THE YEAR 1910

RECEIPTS

Balance on hand, December 25, 1910	$53.80
Dues, life membership	293.00
Annual dues	3444.00
Subscriptions	183.00
Publications sold	413.59
Total receipts	$4387.39

EXPENDITURES

Legislative notes	$100.00
Clerical Assistance to Secretary and Treasurer	446.25
Printing, stationery and mailing	3348.41
Postage and office expenses of Secretary and Treasurer	389.99
Miscellaneous	95.44
Total expenditures	$4380.09
Balance on hand December 22, 1910	7.30
	$4387.39

Submitted, December 22, 1910,
W. W. Willoughby.

Audited and found correct:
Isidor Loeb.

PAPERS AND DISCUSSIONS

THE PROPOSED CHANGES IN THE BRITISH HOUSE OF LORDS

BY PROFESSOR T. F. MORAN

Purdue University

The antagonism between the Lords and the Commons is not a matter of recent origin. It is practically as old as the Lower House itself, and may be said to have existed at intervals, at least in one form or another, since the days of Simon de Montfort. It was inevitable that it should be so. When a legislature is composed of two Houses, legally coördinate, the one on an *hereditary* basis and the other upon an *elective*, an opposition of views, interests, and purposes is sure to follow with the advance of the democratic spirit.

The conflict in its present form, however, is a matter of comparatively recent origin. It may be dated from a time, shortly after the General Election of 1906, when the Lords defeated or "mangled" a series of important Liberal measures sent up from the House of Commons; or, in its more intense form, the movement against the Lords may be said to have begun when the Upper Chamber declined, on November 30, 1909, to approve the Lloyd-George Budget until it had been submitted to the judgment of the country. Since that date the relations of the two Houses have been the dominant theme in British politics. Men have talked of Home Rule and Tariff Reform and many other mooted questions, but for the last thirteen months the "Constitutional Question" has been regarded in Great Britain as being the one of most far-reaching and fundamental importance.

For about twenty years prior to 1906 the question of the Lords was not in the foreground of British politics. The Conservative party was in power continuously from August 3, 1886 to December 5, 1905, with the exception of a brief period of less than three years, extending from August 18, 1892 to June 29, 1895, when the Liberals

were in the ascendancy. During this long period of Conservative control, the question of the reform of the House of Lords was, for obvious reasons, held in abeyance, Early in 1906, however, a marked change took place. The new House of Commons which assembled on February 13, of that year was made up as follows: Liberals, 375; Labor Representatives, 55; Irish Nationalists, 83; and Unionists, 157. Inasmuch as the Prime Minister had the support of the Labor Representatives and the Irish Nationalists, as well as of the Liberals, the Government of the day had a majority of 356. As a result of this tremendous Liberal majority, the question of the Lords took on a new form. The conflict between the two Houses became more intense and the issues more clearly defined.

The new Liberal Government set about their work vigorously, and sent up to the Lords bills relating to plural voting, the regulation of the liquor traffic, and education. These bills were either rejected by the Upper Chamber or amended past recognition. The effect was to crystallize the opposition to the Lords. This opposition soon found expression. There was more general interest, perhaps, in the Education Bill than in any other part of the Liberal programme. This measure was introduced into the House of Commons in April, 1906, by Mr. Birrell, then President of the Board of Education. Mr. Birrell explained and defended his measure with great force and skill. His argument, especially during the closing days of the debate, was very effective. Even the *Times* spoke of his charming manner and remarked that he "lit up the occasion with a speech of remarkable eloquence and power." In December (1906) his bill passed the Commons by a large majority, but when it went to the Lords it was roughly handled. It was amended beyond recognition. In the language of Mr. Birrell, it was most miserably mangled and twisted. When it was returned to the Commons its acceptance by that body was out of the question. The scene was a remarkable one. The attendance, both on the floor and in the galleries, was unusually large when Sir Henry Campbell-Bannerman delivered his funeral oration over the bill, and announced that it died from an overdose of sectarianism. Mr. Birrell had but little to say. "Silence," he remarked "best befits the death chamber."

The defeat of the Education Bill by the Lords drew the fire of the Commons. A resolution, introduced by the Prime Minister, was passed to the effect that, "the power of the other House to alter or reject bills passed by this house, should be so restricted by law as to

secure that, within the limits of a single parliament, the final decision of the House of Commons shall prevail." The Premier evidently meant to serve notice upon the Lords that the Government intended to take action looking to this end at some future time. A blow, apparently, was to be struck, at the *powers* rather than at the *composition* of the House of Lords. The legislative authority was to be placed more definitely and exclusively than ever in the hands of the popular chamber, while the membership of the Lords' chamber, for the time being at least, was to remain unchanged.

Immediately after the defeat of the Education Bill the Lords also took up the matter of the reform of the Upper Chamber. A friendly scheme was presented by Lord Newton, a Conservative, in February, 1907. This plan, like all others emanating from the Peers' Chamber, contemplated a change in the membership, but not in the powers of the Upper House. Lord Newton's Bill was never put upon its passage, but in May (1907) there was substituted for it a resolution providing for "a Select Committee to consider the suggestions which have from time to time been made for increasing the efficiency of the House of Lords in matters affecting legislation." The Committee thus constituted made its report through its Chairman, Lord Rosebery, late in 1908. This report, which was evidently based upon the provisions of the Newton Bill, recommended that the reformed House of Lords be made up of three classes of members as follows:

1. Hereditary peers who had previously held certain high public offices.

2. Two hundred representative peers, elected from the whole body of the peerage, not for life, but for a single parliament.

3. Ten Lords Spiritual,—the two archbishops, and eight Bishops to be elected from the whole number.

The Committee also recommended that the self-governing colonies should be represented in the House of Lords, and that a service of twenty years in the House of Commons on the part of an Irish peer should entitle him to a seat in the Upper Chamber. It was thought that the adoption of this plan would reduce the membership of the House of Lords to about 350. No action, apparently, was taken upon the report at this time.

While the discussion upon the proposals of Lords Newton and Rosebery was still in progress, Sir Henry Campbell-Bannerman resigned the premiership on the 5th of April, 1908, and died seventeen days

later. Under his successor, Mr. Asquith, the Liberal policy was carried forward without interruption. Parliament convened on the 16th of February, 1909, and on the 29th of April following, the Chancellor of the Exchequer presented his now famous Budget. Mr. Lloyd-George felt, apparently, that his Budget was an unusual one, and in introducing it to the House he made a speech several hours in length. Owing to unusual expenditures for old age pensions and national defense, the Chancellor found himself facing a deficit of 15,762,000 pounds which had to be made up from new sources of revenue. In order to obatin this additional amount the Chancellor recommended an increase in the income tax, the estates duty, the liquor license tax, the automobile tax, and the duties on spirits and tobacco. These proposals aroused a storm of protest. Landowners and wealthy men generally were up in arms against them. The Budget was denounced by the use of such terms as "confiscatory," "socialistic," and the like. On the morning after its introduction the *Times* editorially spoke as follows:

> One general impression will be very widely made by the complicated and portentous Budget which Mr. Lloyd-George expounded at enormous length yesterday. That is that the large deficit of nearly sixteen millions is to be raised almost exclusively at the cost of the wealthy and the fairly well-to-do. They are struck in all sorts of ways; through the income tax, the legacy duties, the estate duties; the stamps upon their investments; their land; their royalties; their brewery investments; and their motor cars.

At a later time Lord Rosebery expressed his opposition to the Budget as follows: "I am against the Socialism which I, in common with Socialists, recognize as inherent in the Budget." (The *Times*, January 7, 1910).

Notwithstanding these protests, however, the Finance Bill passed the House of Commons on November 4, 1909, by a vote of 379 to 149. In due time it went to the House of Lords where it found but few friends. It has not, of course, been customary for many generations for the House of Lords to amend or reject finance bills coming up from the Commons, but the Budget of 1909 with its so-called "Socialistic implications" tacked on seemed to many to warrant a departure from this rule. Hence the Lords began the attack, and Lord Lansdowne, the Opposition Leader, moved (November 22, 1909) the adoption of the following resolution; "That this House is not justified in giving its consent to this Bill until it has been sub-

mitted to the judgment of the country." The resolution was rather skilfully phrased so as not to reject the Bill outright.

There was a vigorous debate upon this resolution lasting for eight days, in the course of which Lord Rosebery, speaking from the "cross-benches," counselled moderation. "You should think once," he said, "you should think twice and thrice, before you give a vote which may involve such enormous constitutional consequences." Lord Morley, "calm and thoughtful," also spoke words of admonition. The Lord Chancellor also took part in the debate. After reviewing the fate of recent important Liberal measures, he spoke as follows; "It is, in my opinion, impossible that any Liberal Government should ever again bear the heavy burden of office unless it is secured against a repetition of treatment such as our measures have had to undergo for the last four years."

The Archbishop of York, also, contrary to the usual custom of the spiritual peers in regard to political questions, remonstrated against Lord Lansdowne's motion. It was carried, however, just before midnight, on the 30th of November, 1909, by a vote of 350 to 75—a larger House probably than any peer present had ever seen before.

Three days later a response came from the House of Commons. On December 3, 1909, Mr. Asquith introduced the following declaration and moved its adoption: "That the action of the House of Lords in refusing to pass into law the financial provisions made by this House for the service of this year is a breach of the Constitution and a usurpation of the rights of the Commons." While speaking to his motion Mr. Asquith characterized the action of the Lords as "the greatest indignity," and "the most arrogant usurpation to which for more than two centuries the House of Commons has been asked to submit."

As a result of this open rupture between the two Houses of Parliament was dissolved on January 10, 1910, and the newly elected Parliament assembled for the first time on February 15. The result of the election was unsatisfactory. It did not render a clear mandate from the electorate on any particular issue. In the course of the campaign four important questions were discussed: the Budget, Home Rule, Tariff Reform, and the question of the reform of the House of Lords. The complications were such that many an elector must have been sorely puzzled in the casting of his vote. The Liberal majority was greatly reduced and the Government could continue to exist only with the support of the minor parties. The Government was compelled to speak, if it spoke at all, "with divers tongues."

The detailed result of the election was as follows: Liberals, 275; Unionists, 273; Irish Nationalists 71; Independent Nationalists, 11; Labor Representatives, 40. This gave the coalition forces a majority of 124 over the Unionists, but it also made it necessary, apparently, for the Government to make some concessions to the minor parties in order to secure their support. Even with the support of the two smaller parties the majority of the Government was reduced from 334 at the time of dissolution to the 124 mentioned above.

The new Parliament assembled on the 15th of February, 1910, and the King's speech, which was awaited with great interest, was delivered on the 21st. The part touching the status of the Lords' Chamber ran as follows: "Proposals will be laid before you, with all convenient speed, to define the relations between the Houses of Parliament so as to secure the undivided authority of the House of Commons over finance, and its predominance in legislation." In commenting on this declaration the Prime Minister said that the Government would, in due time, introduce resolutions defining the relations between the Houses of Parliament. He also said, however, that the delayed Budget would be passed before the question of the Lords would be taken up.

It was expected that the Finance Bill would be presented and passed at once, but there was some delay on the part of the Government in carrying out this programme. There was not complete unanimity in the ranks of the coalitionists. The Irish Nationalists under the leadership of Mr. Redmond were to give their support to the Budget, but the Independent Nationalists were rebellious and vindictive. Mr. O'Brien, the leader of the latter, in the course of a speech delivered at Cork early in March, 1910, denounced Mr. Redmond and his followers as "Budgeteers" and men of wobbling and blunder-headed incapacity. In the meantime the Budget failed to appear, and its non-appearance was the subject of sarcastic comment on the part of Mr. Balfour and other members of the Opposition.

Progress was being made, however, in the Upper Chamber. On March 14, 1910, Lord Rosebery, according to previous announcement, introduced a series of resolutions affecting the composition of the Upper Chamber. A large and brilliant audience, both in the benches and the galleries, had assembled to listen to his plan of reform. His resolutions as presented read as follows:

1. That a strong and efficient Second Chamber is not merely an integral part of the British Constitution, but is necessary to the well-being of the State and to the balance of Parliament.

2. That such a chamber can best be obtained by the reform and reconstitution of the House of Lords.

3. That a necessary preliminary of such reform and reconstitution is the acceptance of the principle that the possession of a peerage should no longer give the right to sit and vote in the House of Lords.

These resolutions, indicating as they do a marked advance in democratic sentiment, were approved by the peers, the first two without a division, and the third by a vote of 175 to 17. In advocating the passage of his resolutions Lord Rosebery made a brilliant speech in which he protested against the establishment of the "impotent Chamber" contemplated by the plan of the Government. "They propose," he said, "to establish a precarious, muzzled, impotent phantom of a Second Chamber," a "House of puppets and cripples" which might well be called "the Painted Chamber." Why not go to Madame Tussaud, he exclaimed, and get some waxen images dressed up in the robes of peers? He also warned the House against the danger of delay. If not reformed, he said, "the ancient House of Lords may be found waiting in decrepitude for its doom." "My Lords, the words 'too late' are written across the history of every national catastrophe." There was a general debate on the resolutions and some objections to them. Lord Halsbury called them "mischievous," yet they were approved almost unanimously.

One week after the introduction of the Rosebery resolutions (March 21, 1910) the Premier introduced into the House of Commons a series of resolutions embodying the views of his Government upon the relation of the two Houses. The substance of these resolutions was incorporated in a measure called the "Parliament Bill;" which was ordered printed by the House of Commons on April 14, 1910. This "Parliament Bill" or "Veto Bill", as it has been popularly called, is important because it contains the Government plan for the revision of the powers of the House of Lords. The text of the Bill covers two and a half printed pages and is set forth in six sections, the first two of which are the most important. The first section proposes to vest the power over money bills exclusively in the House of Commons and reads in part as follows:

If a Money Bill, having been passed by the House of Commons, and sent up to the House of Lords at least one month before the end of the session, is not passed by the House of Lords without amendment within one month after it is so sent up to that House, the Bill shall, unless the House of Commons direct to the contrary, be presented

to His Majesty and become an Act of Parliament on the Royal Assent being signified, notwithstanding that the House of Lords have not consented to the Bill.

The second section, proposing to restrict the power of the House of Lords as to bills other than money bills, reads as follows:

If any Bill other than a Money Bill is passed by the House of Commons in three successive sessions (whether by the same Parliament or not), and having been sent up to the House of Lords at least one month before the end of the session, is rejected by the House of Lords in each of those sessions, that Bill shall, on its rejection for the third time by the House of Lords, unless the House of Commons direct to the contrary, be presented to His Majesty and become an Act of Parliament on the Royal Assent being signified thereto, notwithstanding that the House of Lords has not consented to the Bill; Provided that this provision shall not take effect unless two years have elasped between the date of the first introduction of the Bill in the House of Commons and the date on which it passes the House of Commons for the third time.

This bill has been approved by the House of Commons and represents the platform upon which the Government now stands.

In the meantime Lord Rosebery was not idle in the Upper Chamber. On the 13th of April he gave notice of certain "further resolutions" which he proposed to submit respecting the reform of the House of Lords. The text of these resolutions is as follows:

1. That in the future the House of Lords shall consist of Lords of Parliament:
(a) chosen by the whole body of hereditary peers from among themselves, and by nomination by the crown;
(b) sitting by virtue of offices and of qualifications held by them;
(c) chosen from outside.
2. That the term of tenure of all Lords of Parliament shall be the same, except in the case of those who sit ex officio, who would sit so long as they hold the office for which they sit.

These resolutions were agreed to by the Lords on November 17, 1910. Shortly after the introduction of Lord Rosebery's resolutions the Budget which had been the occasion of so much dispute was hurriedly passed by the two Houses and Parliament adjourned on April 29 (1910), to meet again on the 8th of June.

A week after the adjournment of Parliament (May 6) the death of the King took place and this event tended to temper the animosity of the opposing parties. A spirit of conciliation prevailed. As a

result of this feeling a Conference Committee consisting of eight members equally divided between the Liberals and the Unionists held a score or more of secret meetings in an attempt to find some common ground upon which both sides could agree. The Conference failed in its primary object and this failure was announced by the Prime Minister in an official statement on November 10, 1910. The Conference had sat at intervals since the 17th of June and since that time the "Constitutional Question" remained *in statu quo*. The Irish Nationalists snarled at the Conference, the Labor representatives condemned it, and the Radicals were impatiently calling for "a fight to a finish" yet there is good reason to believe that the great mass of the British people approved it, unprecedented though it was. Parliament adjourned on August 3 to meet again on the 15th of November, and many hoped that in the interim the Conference would reach some sort of compromise. In this hope they were disappointed, and the Prime Minister remarked sententiously in the House of Commons on the 18th of November, "the result is that we revert to a state of war."

During the early days of the session it was indeed evident that there had been a reversion to a state of war. The Liberals stood upon the provisions of the Parliament Bill while the Unionists were committed to the Rosebery Resolutions. In addition to these plans two others were outlined, one by Arthur Balfour, the other by Lord Lansdowne. Mr. Balfour, speaking at Nottingham on the 17th of November, set forth his ideas clearly and concisely in two sets of resolutions as follows:

First Series

1. A second chamber is necessary;
2. it must be a real and not a sham second chamber;
3. the House of Commons must remain the dominant chamber.

Second Series

1. The reformed second chamber must be smaller than the House of Lords.
2. An hereditary peerage shall not carry the right to a legislative seat.
3. The new chamber shall consist of—

(a) persons qualified by distinguished public service;
(b) persons elected by the peers;
(c) persons, in number at least half the total, elected or selected from the outside.

He would have deadlocks adjusted by conferences or joint sittings of the two houses, and in case of disagreement over questions of national importance he would invoke the referendum.

A few days later (November 24, 1910) a series of resolutions bearing upon the "Constitutional Question" and framed by Lord Lansdowne were passed by the House of Lords without division. These resolutions provided for joint sittings, the referendum, a reduction in the membership in the Upper House, the waiving of the right to reject or amend money bills, and in general, followed the lines laid down in the resolutions of Lord Rosebery and Mr. Balfour.

The issue was now rather clearly defined. The Government would take away certain of the powers of the House of Lords, but would leave its membership for the present, at least, untouched, while the Unionists would leave the powers of the upper chamber as they now are, but would revise and reduce its membership. The Government would weaken the Upper House, while the Opposition would strengthen it. Neither side was disposed to look with favor upon the plan of the other, and an appeal was made to the country. Parliament was dissolved on November 28, and a General Election followed which resulted in almost no change in the composition of the House of Commons. This new Parliament will meet on January 31, 1911, and in the meantime the two contending parties are clearing the decks for action.

Any criticism which might be passed upon the two opposing plans at this time must, of necessity, be tentative. While the plans differ in principle, both are general and incomplete. The preamble of the Parliament bill states that it is the intention of the Government "to substitute for the House of Lords as it at present exists, a second chamber constituted on a popular instead of hereditary basis," but that "such substitution cannot be immediately brought into operation." The plan of the Government is therefore not final.

It will be noticed also that the resolutions of the Opposition are couched in terms so general as to be almost vague. There is some justification for Mr. Asquith's remark that Lord Rosebery's second chamber is a "nebulous body of uncertain size."

Yet notwithstanding all of this uncertainty in regard to detail, one may safely, I think, consider the relative merits of the two principles underlying the schemes of reform. Personally, I am inclined to look with more favor upon the Unionist plan because it contemplates a strong second chamber and thus maintains the integrity of the bi-

cameral principle. I believe with the late Professor Lecky that "the necessity of a second chamber, to exercise a controlling, modifying, retarding, and steadying influence, has acquired almost the position of an axiom." I also have a good deal of sympathy with the sentiment expressed by Joseph Chamberlain in a letter to Mr. Henry Payton and published in the *Times* of November 25, 1910. In the course of this letter Mr. Chamberlain says:

I believe that the majority of the people are in favor of a second chamber, which gives to us, as it does to all self-governing nations in which it obtains, the advantage of time for reflection and necessary deliberation in regard to new legislation. We do not wish to trust our interests to a motley majority of Irish Nationalists, Socialists, and Radicals.

Mr. Chamberlain in this letter, touches upon one of the serious difficulties in the case. The Irish Nationalist is interested primarily in Home Rule, and the Labor representative in the advancement of labor legislation; each is interested in the reform of the House of Lords as it affects his own particular program. A matter of such surpassing importance, it seems to me, should be considered in a broader way. I believe that the passage of a carefully considered home rule measure would be a wise step. I also believe that certain parts of the labor programme should be passed into law, but I do not believe that either home rule or the Osborne Judgment or any other selfish or party consideration should be a deciding factor in the settlement of the "Constitutional Question." Mr. Balfour was justified in protesting as he did last month at Nottingham against being governed by log-rolling factions of men who do not consider adequately the welfare of the country or the needs of the Empire. The Liberals are not by any means all "howling dervishes," as a member of the Upper House recently called them, yet the House of Lords may be useful in the future as it has been in the past in checking the "mad gallop" of radical legislation. The House is an imperial as well as a national asset, whose usefulness should not be lightly impaired.

There is one weak, or perhaps better, incomplete feature of the Unionist plan to which attention should be called. There is no adequate assurance that the reformed Upper Chamber will be likely to revise Conservative and Liberal measures impartially. In recent years Liberal measures have been frowned upon by the House of Lords while Conservative bills have been received with a benignant

smile and a complacent nod. Sir Edward Grey's point was well taken when he said at Leeds in August of 1909, "The House of Lords is a weapon—a great gun, if you like to call it so, which can be pointed only against Liberal measures, and which is in the hands of the Conservative Party." In case some plan could be devised whereby the House of Lords would be as likely to be Liberal as Conservative in politics a great stride towards equality and justice in legislation would have been taken.

In conclusion I might say that I have faith in the Conservative common sense of the British people, and should expect a reasonable and workable solution of the "Constitutional Question." There should certainly be a change in the membership of the Upper Chamber. The principle of heredity is both illogical and antiquated. It is not in harmony with the present democratic spirit in England. It has made the House of Lords almost what Mr. Churchill recently called it "a comical anachronism." The Upper Chamber should be modernized, preferably, it seems to me, along the lines laid down by Lord Rosebery and Mr. Balfour. However I do not think for a moment that the adoption of the Government plan would result in the breakdown of the British Constitution as some are now saying in the British Isles. Campaign speeches even in England should not be taken too seriously. As Lord Morley once said, the effective campaigner must deal largely in "downright affirmations and burly negations." Not all of the ills prophesied by him will be realized. "Let us be of good cheer," says Lowell in his essay on Democracy, "remembering that the misfortunes hardest to bear are those which never come."

THE RUSSIAN DOUMA

BY I. A. HOURWICH

Washington, D. C.

The present Douma is the outgrowth of well-nigh a century of agitation dating back to the secret societies which brought about the unsuccessful military insurrection of December 26, 1825.

There is an apocryphal story which has gained currency through the efforts of friendly English journalists, to the effect that Czar Alexander II was about to proclaim a constitution on the very day when the bomb of the terrorists blasted the hopes of the liberal portion of the nation. The story would make a fitting climax for "The mysteries of the court of St. Petersburg." The pretended "constitution," however, has since been published and appears to have been nothing but a scheme to create a number of special commissions, with a limited measure of popular representation and with the power to make recommendations to the Imperial Council.

The Imperial order creating the Bouliguin Commission which was instructed to frame a bill for a representative assembly was promulgated on March 18, 1905, in response to popular agitation, which assumed considerable proportions during the war with Japan. In order to stave off the danger of internal troubles while the army was engaged with a foreign enemy in the far East, the Government was resigned to concede some privileges to the people, but it would yield none of its autocratic power. This resulted in the proclamation of the Imperial edict of August the 19th of the same year, creating a consultative assembly; the electoral franchise was to be based upon a property qualification. The qualification for city voters was fixed at such a high figure that many of the members of the learned professions were excluded from the franchise. On the other hand the peasantry was favored in preference to other classes of the people. The Bureaucracy believed that the ignorant peasantry would act as a bulwark against the radical aspirations of the intellectuals.

Had the Bouliguin constitution been proclaimed a few years before, it would have been hailed by all classes of the people as a great advance on the road towards popular self-government, but coming as it did at the time when the democratic agitation had forced its way through all bureaucratic dams and united citizens in all stations of life into a federation of professional associations, farmers' alliances, railway brotherhoods, etc., the Boulguin constitution only added fuel to the flames. The general strike in October of the same year forced the Czar to sign the manifesto of October the 30th by which it was decreed "that no law shall take effect without the approval of the Imperial Douma", the administration being instructed at the same time to frame a provisional amendment to the election law extending the voting privilege to the disfranchised classes of the people. "The further development of the principle of universal suffrage" was left by the manifesto to be worked out "in the newly established legislative order."

The election law of December 24, 1905, granted a few grudging concessions to the several classes of citizens who had been active in the great October political strike. The franchise was extended to all railway employees with the exception of those engaged in "menial service," to all commercial clerks holding a license, to all tenants renting separate apartments and to all operatives in factories employing more than fifty hands. The elections, however, were indirect; the voters were divided into curiae, each being entitled to send a specified number of delegates to the provincial electoral college, by which the members of the Douma were to be elected. In some instances the will of the voters was to be sifted through a double and even a triple sieve. Thus the operatives of each factory elected a shop delegate at their own shop meeting; the shop delegates of the whole election district met together and chose electors for the labor curia; these latter met jointly with representatives of other curiae in the electoral college by which members of the Douma were elected. The apportionment of the electoral vote among the several curiae of voters was extremely unequal. All factory operatives were entitled to choose throughout the empire 236 electors; while the rest of the city voters were allowed 3455. The ratio of representation for each class was about as follows: rural property, 1 elector to 2,000 population; city real estate and business, one elector to 4,000 population.; peasantry, one elector to 30,000 population; factory operatives, one elector to 90,000 population.

The concessions of the government did not pacify the people. Disturbances broke out in all parts of the country. In order to keep the spirit of unrest in check, martial law was proclaimed practically over the whole Empire. Under such extraordinary circumstances the elections to the first Douma were held. Political meetings were prohibited in effect. Newspapers were suppressed. All opposition parties were put under the ban. The official telegraph agency deliberately omitted all mention of the party affiilation of the successful candidates. Trumped up charges were preferred against men of note, who were considered political leaders, in order to make them ineligible. In this way Professor Milukoff was kept out of the first Douma. Immediately after the campaign was over the charges were dropped.

By these means the Government hoped to secure the election of an assembly obedient to the will of the Bureaucracy. It succeeded only in filling nearly one-half of the seats (212 out of a total of 448) with "non-partisan" members, that is, new men without any previous political affiliations. The great majority of them were peasants. But born leaders immediately came to the front, such as Aladin and other farmers' sons who like him had studied in colleges and universities, and it took them but little time to organize one-half of these "non-partisan" members into the "Group of Toil." Three-fourths of the Douma (73 per cent) were thus enrolled in one or another of the opposition parties. Moreover nearly all of the "non-partisan" members voted with the opposition. The supporters of the Government numbered 16 members and most of these were moderate liberals. The address of the Douma to the Czar, in which the demands of the people were formulated was passed by a unanimous vote, five dissenting members under the leadership of the late Count Heyden not voting, in order to make this expression of the will of the people unanimous.

The first Douma was the subject of considerable criticism on the part of foreign observers. It was accused of being an assembly of talkers. The historian, however, in passing judgment on the short lived career of the first Douma should not lose sight of the conditions under which it was elected. If "government by committee" be deemed the highest stage in the evolution of democratic government, it must be remembered that this achievement has been attained in this country after a century of congressional history. In the American Congress the slate for the various committees is sometimes made a

year in advance of the opening of a new congress. In Russia many of the members of the first Douma were in prison or in exile a year before the opening of its session, while others had prior to their election to the Douma never participated even in a debating society, inasmuch as under section 318 of the Russian Penal Code, which is still in force, a debating society is a criminal conspiracy. The first Douma at the opening of its session had no rules of procedure. The appointment of committees in a parliamentary body presupposes the existence of organized political parties. The members affiliated with each political party have been elected on a definite platform. The places on the various committees being apportioned among members of all political parties, all sides to every question are assured of a hearing. In the first Douma, however, where nearly one-half of the members were merely "favorite sons," every one was in duty bound to give expression to the grievances of his constituency. The absence of a public discussion of the political issues before election had accordingly to be made up for by a discussion on the floor of the Douma preliminary to the reference of a bill to a committee.

Nevertheless the first Douma, judged by the standards of efficiency of older legislative bodies, made a fairly creditable record for one short session. It passed a law abolishing capital punishment. The bill was carried by a unanimous vote in the Douma, but it was laid at rest in a committee of the Imperial Council. A number of bills were referred to committees; chief among them were acts dealing with the following subjects: (1) equality of all citizens before the law; (2) immunity of the citizen from arrest without due process of law; (3) freedom of assemblage; (4) freedom of association; (5) freedom of the press; (6) reform of local government; (7) land reform.

The work of the Douma could have been facilitated by the Government, which under the Russian constitution has the right of initiating legislation. It must be borne in mind that the act creating the Douma did not repeal any of the numerous statutes denying the subjects of the Czar the most elementary rights and liberties enjoyed by the citizens of all civilized countries. The manifesto of October 30, 1905, instructed the administration "to grant to the population firm foundations of civil liberty upon the principles of real security of person, freedom of conscience, freedom of speech, freedom of assemblage and of association." It therefore became the duty of the cabinet to embody these principles into bills for the consideration of the Douma. But the legislative initiative of the Government during the existence of

the first Douma exhausted itself in the introduction of two bills: (1) An act to provide for the establishment of a laundry at the University of Juriew (Dorpat); (2) An act to provide for the maintenance of a hot-house at the same university.

After the Douma had almost unanimously passed a vote of want of confidence in the government its coöperation with the latter became impossible. The Douma was dissolved on July 21, 1906, after a brief existence of 72 days. It was a foregone conclusion that a new election upon the same basis of representation must result in the defeat of the Government at the polls. The election law, however, could be amended only by the Douma. Still the Government found a way out of the dilemma. The intricacies of the election law were submitted for construction to the First Department of the Senate, which is a bureaucratic tribunal having jurisdiction in matters of "administrative justice" (according to European terminology). The interpretations of the Senate uniformly tended to create new restrictions of the right of suffrage. Every method was resorted to in order to thwart the free exercise of the voting franchise by the opposition. To quote but one example, the form of the ballot was devised with a view to confusing the opposition voters in the cities. All technical matters relating to elections are under the law regulated by the Minister of the Interior. Under the rules issued by the Minister, blank ballots were prepared by the municipal governments and each voter was served at his residence with two copies, one of which was to be filled out with the full names, titles and addresses of the candidates. In great cities there were half a dozen or more candidates to be voted for. It was accordingly expected that this catch ballot would practically disfranchise the common people, for the majority of the ballots would be spoiled. "Incorporated political parties," however, that is, those supporting the Government, were granted the privilege of obtaining from the city government any desired number of blank ballots for distribution among the voters. In this manner all administration parties were enabled to have their ballots printed.

Nevertheless such was the general disaffection of the people that the second[1] Douma proved to be more radical than the first.

[1] The membership of the second Douma was divided according to political affiliation as follows:

Social Democrats	65
Social Revolutionists	36

The Socialists and the Laborites together controlled 43 per cent of all seats, the more moderate opposition parties together 36 per cent, whereas the Government could rely upon the votes of only 55 out of a total of 504 members, and with the support of the non-partisan members it could control only 21 per cent of the total vote.

The fate of the Douma was sealed from the day its political complexion became known. The Government decided upon a *coup d'état.* A new election law was carefully drawn up in the privacy of the departments, with the object of reapportioning the representation among the several classes of the people in such a manner as to insure under all circumstances the election of a majority favoring the Government. It was self-evident that such a bill could never pass the Douma. Therefore, on June 3 (16), 1907, the second Douma was dissolved and a new election law was proclaimed by an Imperial order of the same date, in direct violation of the Manifesto of October 30, 1905, and of sec. 87 of the Fundamental Law, expressly providing that the election law could not be amended without the consent of the Douma. Under the new election law the number of electors chosen by the peasantry has been reduced from 40 to 22 per cent of the total number; at the same time the number of electors chosen by the large landed proprietors has been increased from 33 per cent to 50 per cent. The owners of city real estate have been segregated into a separate curia, which chooses 13 per cent of all the electors. All other city voters elect 11 per cent of the total number of electors. In this manner large property interests are assured 63 per cent of the total electoral vote. In order to insure the predominance of the Russian race in the Douma, the new law empowers the Minister of the Interior,

Populistic Socialists	15
Laborites	101
Constitutional Democrats	91
Poles	46
Moslems	28
Cossacks	17
Total opposition	399
Octobrists and Moderates	43
Monarchists	12
Non-partisan	50
Total for the Government	105

in those sections of the country where the Russians form a minority of the population, to segregate them into a separate curia entitled to choose its own representatives. Thus a handful of Russian officials in the city of Warsaw elect one member to the Douma, and the rest of the population of the city another. The representation of Poland in the Douma has been reduced from 36 to but 14, and the representation of the Caucasus from 27 to 10, because the voters of these sections have been arrayed on the side of the opposition. The ratio of representation in Poland is one representative to 671,000 inhabitants, in the Caucasus 1 to 850, whereas in the rest of European Russia it is 1 to 234,000 inhabitants. For the same reasons the representation of Siberia has been cut down from 46 to 15.

Under the election law of December 24, 1905, the peasant delegation in the provincial electoral college was entitled to choose independently of all other electors one member of the Douma to represent the peasant curia. In those provinces where the factory operatives were entitled to a separate class representation the same privilege was enjoyed by the labor electors. The principle of class representation has been retained in the new law with the important modification, however, that now the peasant and labor representatives in the Douma are chosen by the entire electoral college. Thus if all the peasant electors but one belong to opposition parties and the one exception is a supporter of the Government, he is certain to be chosen by the Government majority of the electoral college.

It is needless to go into further details The Government was confident of the support of the large property interests, and the new election law secured for the Government a majority in the third Douma. There is a minority of representatives of the opposition parties to give the Douma the appearance of a parliament in the eyes of the outside world. There is even a sprinkling of Socialist representatives who have been returned by the factory operatives and the peasantry of the Caucasus and Siberia.[2] To the uninitiated outsider

[2] The membership of the third Douma is distributed according to party affiliation as follows:

Government Parties

The Right (Supporters of Autocracy)	151
The Centre (Octobrists)	124
Non-partisan	18
Total	293

the presence of fifteen Socialist members in the Douma may appear as evidence of a substantial degree of political liberty enjoyed by the people of Russia under the liberal rule of Mr. Stolypin. The fact is that this was possible only because every elector representing the factory operatives and the peasants in the sections named were Socialists and the majority of the electoral college had no one else to choose from.

At last the Government has secured a majority in the Douma with which it can coöperate. The third Douma has completed three years of its five year term. This is long enough to demonstrate the practical working of the new order. The question may now be put, What are the powers of the Douma and what has it accomplished?

The Manifesto of Ocotber 30, 1905, made the Douma a coördinate branch of the legislative power. Yet while no law can take effect without the approval of the Douma, neither can it take effect without the approval of the Imperial Council, in which the majority of the members hold their seats by appointment of the Czar, who has moreover the veto power. Such a system bears within it the danger of legislative stagnation in case of a deadlock between the monarch and the popular branch of the legislature. The Government provided against it in the revised edition of the Fundamental Law, which was published on April 23 (May 6), 1906, only four days before the opening of the session of the first Douma. This edition contains an amendment (section 87) which empowers the government during recess of the Douma to enact urgent legislation by executive order, provided that the laws so enacted must be introduced into the Douma within two months of the opening of its next session. The smuggling of this amendment into a revised edition of the organic law constituted in itself a usurpation of exclusive legislative power, which the Crown had abdicated by the Manifesto of October 30, 1905. That section 87 of the Fundamental Law is not needed to provide for emergencies, is made clear by reference to section 4 of the Constitution of the

The Left (Opposition)

Constitutional Democrats	52
Progressives	39
Social Democrats	15
Laborites	14
Poles and Lithuanians	18
Moslems	9
Total	147

Douma, under which the Czar reserves the power to call the Douma in extra session. But section 87 enables the government to legislate without the consent of the Douma. Should the Douma be inclined to withhold its approval from acts promulgated by the Government by virtue of that section, the Czar may dissolve the Douma. In this manner these extra-parliamentary laws can remain in force until the election of a Douma that will do the will of the Government.

That this is not mere speculation, is illustrated by the recent reform of the laws relating to communal land tenure among the peasantry. The form of peasant land tenure was under consideration by several government commissions, beginning with the commission which inaugurated the emancipation of the peasantry in 1861, down to the commission appointed after the peasant disturbances of 1902. It had been the subject of scientific investigation and public discussion for more than half a century preceding the revolution of 1905. It was the paramount question in the first Douma. After the dissolution of the latter and three months before the assembling of the second Douma the government proclaimed the Act of November the 9th (22), 1906, amending the laws relating to communal tenure of land and authorizing the partition of communal lands among the members of the peasant communes. It is obvious that a great reform in social legislation, which had been pending for half a century, could have been postponed for three months until the opening of the session of the second Douma, or even for a year until the opening of the third Douma, to permit of a thorough consideration of the whole problem in regular legislative order. As it was, the Government had four years within which to carry out its plans of reform of property relations, before the third Douma approved its action *nunc pro tunc.*[3]

This is not an isolated example. In the interval between the dissolution of the first and the assembling of the second Douma, 60 laws were promulgated by order of the Czar, pursuant to section 87. This practice has not ceased with the election of the third Douma, notwithstanding the fact that the Government now has a safe majority in support of its policies.

The power of the administration in Russia is at present more absolute and its rule more oppressive, than it ever was in the darkest days before the Revolution. But the Douma is at best powerless

[3] Act of June 14 (27), 1910.

to bring relief to the people, inasmuch as by another unconstitutional amendment to the organic law (section 15 of the Act of May 6, 1906), the Czar has reserved to himself the right to suspend the operation of ordinary laws, to invest the administration with summary powers, and to proclaim martial law.

The most effective weapon with which a legislative assembly can resist the aggressions of the crown is the control of the representatives of the people over the public purse. The Russian Government, however, had the foresight to disarm the Douma by incorporating another amendment in the revised edition of the organic law, providing that should the Douma fail to pass the appropriation bill for the ensuing fiscal year, the appropriations of the previous year remain in force (section 116). The budget rights of the Douma are further curtailed by the "Provisional Rules" of March 8 (21), 1906, which antedate the revised edition of the organic law and were likewise enacted in disregard of the rights of the Douma conceded by the Manifesto of October 30, 1905. By these rules 70 per cent of the appropriations for all departments of the government were fixed in advance, leaving, however, to the Douma, the privilege of raising those appropriations in its discretion. Certainly, it is within the power of the Douma to repeal the Provisional Rules of 1906. But the first and the second Douma were dissolved before they had time to reach the consideration of the budget. Nine days after the opening of the third Douma, on November 10 (23), 1907, the Constitutional-Democratic party introduced a bill for the repeal of those rules, but withdrew it in favor of a compromise resolution urging upon the government "the desirability of a modification of the Rules of the 8th of March." The resolution was carried by a majority vote, but the Government has so far paid no heed to the wishes of the Douma. The natural course for a parliamentary body jealous of its prerogatives would have been to pass the Constitutional-Democratic bill. But it must be understood that the repeal of the Provisional Rules by the Douma would in itself have been of no effect, unless the Imperial Council concurred in the bill, and even then it could have been vetoed by the Czar. All the Douma could have done, would have been to refuse to vote the appropriation bill. This would have resulted in a deadlock between the Douma and the Government and would most likely have ended in the dissolution of the third Douma. Thus, whatever may be the theoretical rights of the Douma, in fact the budget is "armor-plated," as they say in Russia, against attack from the Douma.

The dominant position in the third Douma is held by the "party of October 17," which claims to stand upon the platform announced in the Manifesto of October 17 (30), 1905. As stated above, the Manifesto pledged to the people the enactment of laws which would assure to the citizen immunity from arrest without due process of law, freedom of conscience, freedom of speech, freedom of assemblage and of association. This was a broad legislative program, but the activity of the third Douma has been remarkably barren of results. The only reform measure that has been passed by the Douma during these three years, is the Religious Denominations Act, which permits every citizen to withdraw from the established church and join any other denomination. This is substantially not more than a reenactment of the ukase of April 12 (25), 1905, on religious tolerance, proclaimed by the Czar before the creation of the Douma. No citizen, however, is allowed to withdraw from all church affiliation. The amendment proposed by the opposition to make affiliation with a religious denomination optional, was defeated in the Douma.

The third Douma has shown itself a willing agent of the Bureaucracy. It has changed nothing in the Russian scheme of Government. It has acted as the instrument of the Russian Bureaucracy in destroying the constitutional liberties of Finland. The permanency of the Douma as an institution would therefore seem to be assured. Still even that much cannot be said with any degree of certainty. The Minister of Justice, Mr. Stcheglovitov, has declared on the floor of the Douma that "thank God, we have as yet no parliament." Sec. 4 of the Fundamental Law still proclaims that "the sovereign autocratic power belongs to the Emperor of all the Russias." Premier Stolypin has publicly expressed the view that, notwithstanding the manifesto of October 30, 1905, the form of government in Russia is still an autocracy.

That these utterances are not mere conventional forms of speech, but that they accurately define the real correlation of powers in the Russian state, is shown by the following incident. During the session of the second Douma a bill was introduced by the Government to provide for a number of offices on the general staff of the navy. The bill was passed in the Douma, but was defeated in the Imperial Council. The reactionary majority of the Imperial Council held that matters relating to the army and navy are exempt by the organic law from consideration by the legislative branch of the Government, being within the prerogative of the Czar. The Cabinet reintroduced

the same bill in the third Douma, where it was again carried. This time the Imperial Council by a large majority concurred in the action of the Douma. But the Czar vetoed the bill of his own cabinet, assigning as a ground for this extraordinary action that by virtue of sec. 96 of the Fundamental Law all legislative matters in respect to the army and navy are within the prerogative of the Monarch.[4] In reality, sec. 96 of the Fundamental Law vests in the Czar the power to regulate by executive order all matters pertaining to the administration of the army, "provided the same do not call for new expenditures from the treasury." The strained construction of section 96 by the Czar was at variance with its interpretation by his own legal advisers. In any constitutional monarchy such a conflict would have terminated in the resignation of the cabinet. The Russian premier and his colleagues, however, are not responsible constitutional ministers, but merely servants of the autocratic Czar. It was quite proper for them to obey the will of their sovereign master and to remain in office.

There are optimists in Russia who believe that the Douma, with all its limitations, is still a great factor for the political education of the people. It must be remembered, however, that under the exceptional laws now in force, no political meetings of any sort are permitted in Russia. Even members of the Douma are denied permits to hold public meetings for reporting to their constituents the proceedings of the Douma. The rigid censorship exercised by the administration over the local press has left very few independent newspapers in the country, while the chiefs of the local administration are vested with the power to prohibit the circulation of metropolitan dailies within their districts. Editors of country papers are not infrequently fined and imprisoned for reprinting items from the metropolitan press. Under such conditions the educational influence of the Douma as yet remains a purely academic proposition.

[4] Imperial Rescript of April 27 (May 10), 1910.

THE TURKISH PARLIAMENT

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The political situation of Turkey is undoubtedly the most complicated in the world to-day. To begin with, it contains a full measure of internal problems of the usual sort but of unusual acuteness. It is further seriously conditioned by the actions and interactions of three sets of rival interests: the group of distinct nationalities within the country, unassimilated after centuries; the cluster of small but active neighboring states, formerly a part of Turkey, and not yet satisfied with the terms and bounds of separation; and the family of the distant great nations, seeking strenuously to apportion and regulate the world. In the presence of these numerous forces, the Ottoman Empire, once during a brief period of splendor the strongest state in the Mediterranean sphere of civilization, has for some generations hung balanced on the verge of destruction. Two years ago a new spirit seemed to be breathed into it, a new life to be begun whose precarious thread perhaps furnishes the only genuine hope for the permanence of the nation. This new spirit and life is striving to find a sure embodiment and an effective means of expression in and through the Turkish Parliament.

Fortunately for the new institution, its promoters of the Committee of Union and Progress inspired such general confidence by their earliest actions in connection with the Revolution of July, 1908, that public opinion in the great nations declared strongly in favor of leaving them free to try out the experiment without interference. The Balkan States, with varying degrees of willingness, acquiesced in this attitude, and had not the Cretan question missed the psychological moment for solution, the complications which confronted the Parliament would practically have been confined to internal affairs.

Even after these simplifications, the situation could hardly have been called promising. It is possible to mention here only a few of the elements of difficulty. Diversity and conservative individuality

of racial character are very marked in a country which contains portions of Europe, Asia, and Africa, and includes some of the oldest seats of human civilization. The constituent nationalities show a duality of grouping, based not primarily on territorial lines, racial descent, or linguistic relationship, but on the far more permanent foundation of the opposition of two great world-religions. One of the Moslem nationalities, the Turkish, has for some centuries maintained over all others, both Moslem and Christian, the iron rule of the conqueror, and has reserved to itself nearly all important places in the public service, both military and civil.

Within this ruling nationality have existed from early times two institutions which correspond in some degree to the Church and State of Mediæval Christendom. The religious institution, which possesses great political influence, rests upon the Sacred Law, the *Sheri*, or *Sheriat*, a system more of jurisprudence than of law, theoretically changeless, and binding on all Moslems. An ancient system of education trains teachers, interpreters, and judges of the Sacred Law, who together make up the body of the *Ulema*. The head of these, the *Sheik-ul-Islam*, is final authority on all matters touched by the Sacred Law, even to the declaration of war and the dethronement of a Sultan. The secular institution has undergone vicissitudes. In early Ottoman days it consisted, as Ranke phrased it, of "a lord and his bondsmen." Having developed gradually from a slave-family to a despotic government, and having passed through a period of great efficiency and authority, attempts were made to stay its decline by the introduction of military and governmental improvements from the West. Imperfectly understood and half-heartedly applied, such attempts at "reform" neither uprooted despotism, nor destroyed excessive centralization, nor removed unspeakable administrative and judicial corruption. The reign of Abdul Hamid II brought these and other evils to high perfection.

The inhabitants of Turkey seemed, in 1908, little prepared for Parliamentary government. In large majority illiterate and without political experience, they appeared to possess few statesmen who united training and ability with integrity and progressiveness. Thirty years of reaction from the attempts at reform seemed to furnish the worst possible preparation for a new régime.

In reality the situation was far from being as hopeless as it looked. There lay hidden some precedent, much preparation, and a strong desire, for a parliamentary government.

Both the religious and the secular institutions of Turkey involve precedents for a Parliament. Mohammed himself conferred with the wisest of his Companions, and once spread his cloak to receive envoys of Christian tribes. The *Ulema* have taken counsel together on occasion up to the present time. The Sacred Law is fundamentally democratic and opposed in essence to absolutism. The habit of regarding it as fundamental law enables even the most ignorant of Moslems to grasp the idea of a Constitution. The Christian nationalities of the Empire also, especially the Greek and the Armenian, have long governed their own affairs under special constitutive laws, which authorized national assemblies. Further, in the early Ottoman times the Sultan gathered about him a Divan of his chief servants, his captains, judges and secretaries. In the glorious period this assembly met regularly four days in the week for the transaction of business. Of late there have been at least a Council of State and a Council of Ministers. The Turkish Parliament may therefore be regarded not as a complete innovation, but as an enlargement and improvement of familiar institutions.

Nor did the Turkish Parliament as such date merely from 1908. Midhat Pasha's attempt of thirty-two years before had prepared the way for it, both by providing a Constitution and by leading to two ineffective parliamentary sessions. A few Young Turks, in those troubled days, thought to find in constitutional government a remedy for their country's grievous ills. Abdul Hamid II and his supporters, on the other hand, desired only to make temporary use of constitutional forms as a means of blocking the interference of the Great Powers. The latter view prevailing, the Parliaments of 1877 and 1878 were noted only for their ready acceptance of the recommendations of their President, and for their running fire of criticisms upon the Ministry. Of the eighteen measures which they passed only one became effective. After the prorogation of 1878, the Sultan neglected to summon another Parliament, though year after year the Constitution continued to be published officially.

The thirty years of oppression seem to have had a curious educative effect. The very badness of the government appeared to turn the minds of many thinking Ottomans toward the principles of the unused Constitution. It alone seemed to promise release from captivity and the restoration of the nation to an honorable place before the world. In patience and silence the end of absolute government was awaited. When in July, 1908, Abdul Hamid, forced by the army

and the Committee of Union and Progress, ordered the election of a new Parliament and proclaimed his intention of governing under the Constitution, the whole country responded with an outburst of joy and a unanimity of approval that seemed miraculous.

So ready was Turkey for the new régime, that in the twinkling of an eye, the nation transferred its obedience from the Sultan to the power that had triumphed over him. The Committee of Union and Progress, relying on the support of the Army, accepted the sovereign control of Turkey, as a trust to be delivered over to Parliament when it should assemble.

The Constitution of 1876 did not fit closely the situation of 1908. This will become clear if its main provisions as regards the Parliament be set forth.

Very careful provision was made to prevent the Parliament from exercising sovereignty or even self-direction. The Sultan or the Ministry might rule, according as the one or the other might be stronger, but the Parliament could only discuss and criticise. While sessions were supposed to last from November first to March first, Old Style, Parliament could be opened and closed only by the Sultan's decree, and with him rested also the power to shorten or prolong the session. The ministers were appointed by the Sultan, quite independently of the Parliament. They were declared responsible, but it was not stated to whom. A cumbersome machinery was provided by which an objectionable minister could be brought before a High Court of Justice for trial, provided the Sultan would give effect to the Parliament's request by his decree. The ministers had the right of entry to the sittings of Parliament. The Parliament had the right of interpellation, but a minister might postpone his answer if he would assume the responsibility of so doing. The initiative of legislation belonged to the Ministry. The Parliament, however, could by another cumbersome process ask for a bill on some subject; in that case the Sultan, if he so willed, would ask the Council of State to formulate a bill and present it to the Chamber of Deputies. The Sultan possessed an absolute veto on all legislation, since a bill could not become law unless its passage by majority vote of each house were followed by the Sultan's decree. It was provided that taxation and expenditure should be adjusted by an annual budgetary law. In case of dissolution before the budget of any year should be passed upon, the Ministry could repeat the budget of the preceding year. These financial provisions might have given the Parliament some power, but

they were not applied in 1877 and 1878. Either house of Parliament or the Ministry might propose constitutional amendments, but these, after passage by two-thirds vote in both Chambers, needed an Imperial decree to give them force. Evidently the Parliament could debate and could harass the Ministry, but it was not given so much power as to become a genuine limitation upon despotism.

Most of the provisions just mentioned have been altered. Those which follow have mostly been retained. The Parliament consisted of an elected Chamber of Deputies, and an appointed Senate. The members of the popular house were to be elected for four years on the basis of one to every fifty thousand males. They were to be apportioned by provinces, and each must be a resident of the province for which he was chosen. The deputies were, however, specifically stated to represent the entire nation. The necessary qualifications were numerous, including Ottoman nationality, the age of thirty years or more, good character, knowledge of the Turkish language, and freedom from foreign service, domestic bondage, bankruptcy, and sentence of court. Pay of $880 per session and the expenses of travel were provided. The officers, a president and two vice-presidents, were to be selected by the Sultan from a list of three names for each, proposed by the Chamber. The deputies were immune from arrest, except for flagrant crime, or after the vote of a majority of the Chamber.

The Senate, or House of Lords, consisted of members appointed for life by the Sultan, to a number not exceeding one-third that of the deputies. The senators must be forty years old, and must have attained distinction in some public way. They were paid $440 per month. The function of the Senate was to examine bills sent up by the Chamber of Deputies, and to sift the petitions of private citizens. The basis for examining bills is interesting. Not merely was constitutionality to be considered, but also conformity with the sovereign rights of the Sultan, liberty, the territorial integrity of the Empire, internal security, national defense, and good morals.

The Constitution of 1876 also promised a number of much-needed reforms, which were to be embodied by legislation. The chief of these were to concern the civil service, the judiciary, education, finance, and the decentralization of local government.

Such was the provision for a Turkish Parliament, according to the Constitution which was brought to the front in July, 1908, as the supreme law of the land. For the time, the fact that there was a liv-

ing Constitution was regarded as all-important. Such modifications as would heal its imperfections were decided upon by the Committee of Union and Progress and put into practice as unwritten law, pending the regular process of parliamentary amendment.

No opposition could be seen to the rule of the sovereign Committee, whose membership was judiciously enlarged until it contained, according to report, eighty thousand of the best of the Ottomans, of all nationalities and religious beliefs. Its inner circle, located at Salonica, acted in the formative days of the new régime with the perfect wisdom of the ideal enlightened despot, effacing self utterly, smoothing away difficulties, recognizing the rights of all internal groups, gaining and preserving the goodwill of the Great Powers, passing between not one Scylla and one Charybdis, but safely and surely avoiding a hundred vortices of destruction. Thus was maintained for months a quiet unanimity of purpose in Turkey, to which there are few parallels anywhere. Age-long difficulties and insoluble problems, fanatics, spies, and corruptionists, dropped completely out of sight, though unfortunately not out of existence.

In this preternatural calm, a sunshiny day after a year of storms, the elections were held for the new Parliament. Under such perfect prenatal influences, the lines of its character were projected as broad-minded and tolerant, public-spirited and patriotic, calm and cautious, firm and imperious. The Committee arranged all details. A dormant bill of the earlier Parliaments was brought forth as an election law. The voters on a basis of manhood suffrage choose electoral bodies of five hundred, and those choose the deputies. Careful manipulation secured the representation of all nationalities with approximate justice. Out of some 260 deputies, there were chosen about 120 Turks, 72 Arabs, 20 Kurds, 15 Albanians, 23 Greeks, 10 Armenians, 4 Bulgarians, 2 Servians, 1 Wallachian, 3 Jews. About two-thirds of these appear to have been the candidates of the Committee. Nearly all were well-disposed towards the new régime, except perhaps the conservative Moslem clerics from the heart of Asia Minor, and the Greeks, who feared the impairment of their privileged position. Taken as a whole, the Chamber of Deputies would seem to represent very well the best elements of the country; all varieties of opinion and of nationality, the Old Turk and the Young Turk, religion, law, leadership, and property.

The Committee decided that two-thirds of the senators should be its nominees, and that the Sultan with the Grand Vizier might choose

the remainder, subject to the Committee's approval. The number 39 was considered sufficient, and the venerable and experienced Said Pasha was made President. Two Arabs, two Greeks, two Armenians, a Bulgarian, and a Wallachian were among those chosen. Four marshals, four ministers of state, two of the *Ulema*, and a poet, helped make the Senate a dignified body of distinguished Ottomans, representing not so much vested interests, as eminent service to the state. The Senate has so far served well as a revising chamber, and has had no noticeable friction with the Chamber of Deputies.

The elections could not be completed by November 14, 1908, and the Parliament was opened on December 17, by Abdul Hamid in person, with magnificent ceremony. About a month was spent in organizing for business and gathering momentum. Ahmed Riza Bey, who had been during twenty years of exile a prominent leader of the Young Turks in Paris, was chosen President of the Chamber. Twice re-elected, he has presided, on the whole, wisely and well. The two Vice-Presidents were chosen and four clerks, and the House was divided by lot into five sections, for the better preliminary consideration of business.

The Sultan gave a banquet to the Parliament on January 1, at which he sat between the Presidents of the two Houses. Most of the members attended, and for so doing and for kissing the Sultan's hand were promptly and roundly reprimanded by the Press. The real work of the Parliament may be said to date from January 13, 1909, when the Grand Vizier explained his policies and received a unanimous vote of confidence. A party of opposition began to form at once, under the name of the *Ahrar* or Liberal Union.

It is not possible here to follow in any detail the history of the Parliament during its two completed sessions and the first six weeks of the third. The principal aims which it has kept before it will be set forth, and the extent to which it has so far realized these aims will be explained in a general way.

The aims of the Turkish Parliament may be grouped under five heads. First, the Parliament has, from its opening, endeavored to secure and maintain sovereign control. Second, it has striven to establish in Turkey, permanently and beyond the possibility of recall, the other leading principles of the Revolution of 1908. Third, it has begun a process of thorough amendment of the Constitution, in conformity with the ideas of the Revolution, the best practice of the most advanced nations, and the peculiar circumstances of Turkey.

Fourth, it has labored at the preparation of laws which will put into operation such provisions of the Constitution as call for legislation to give them embodiment. Fifth, it has endeavored to meet other urgent needs by suitable legislation.

Taking up these aims in the order stated, the story of the first, or the maintenance of sovereign power, constitutes the essential and vital element of the Parliament's labors. When the Parliament assembled, two bodies were exercising governing power in Turkey. On the one hand, sovereignty was felt to reside temporarily in the Committee of Union and Progress, whose published program and successive decisions seemed to have been accepted by all. On the other hand, the administration of home and foreign affairs was manifestly in the hands of the Ministry, which was presided over by the Grand Vizier, Kiamil Pasha, an experienced and high-minded patriarch of eighty-five years, possessed of that almost royal independence of mind which characterizes the best Moslems. Kiamil had been designated by the Committee, but it seems that the harmony of his actions with its ideas resulted from inward agreement rather than from direct outward suggestion. Now that sovereignty was supposed to pass from the Committee to the Parliament, the question arose, would Kiamil acknowledge the latter's authority over his actions? Further, would the Committee, whose inner council had been removed from Salonica to Constantinople, really hand over the supreme direction of affairs to the Parliament?

It would seem that the Committee was sincerely ready to turn over its control to the Parliament, as soon as the transfer could be accomplished safely. But clearly the situation needed most careful watching, while Abdul Hamid and his supporters were in a position to promote reaction. Kiamil seems not to have wished to restore despotism, but to have preferred the doctrines of the Liberal Union, which favored administrative decentralization, to those of the Committee. He seems also to have preferred that sovereign power should rest with the Ministry rather than with the Parliament. About the same time a Mohammedan League began to be formed, with the declared purpose of securing the Sacred Law against infringement, but apparently with no intention of overthrowing the Constitution. The struggle which ensued, however, became in its essence a contest between the old régime and the new, in which the prize of victory was the sovereign control of Turkey.

Kiamil threw down the gauntlet, when on February 11, he dismissed

the Ministers of War and Marine without consulting the Parliament. This act was not contrary to the written Constitution but was contrary to the Committee's proposal to establish full responsibility of ministers to the Parliament. Further, if the armed forces of the nation were to be in unfriendly hands, the Parliament's power could not be maintained. After great excitement, during which Kiamil refused to come before the Parliament, want of confidence was declared by a nearly unanimous vote (198 to 8). Kiamil resigned, and Hilmi Pasha was designated, a man who had the confidence of the Committee and who declared in his speech on policy, that he would observe the closest responsibility to Parliament. A few days later the Committee, which was being seriously blamed both at home and abroad on the ground of continuing to act as an irresponsible power behind the Parliament, announced the formation of a parliamentary Party of Union and Progress, which would support the Ministry. On April 13, this party announced its program.

Meanwhile matters were becoming critical. The Press and populace of Constantinople had fallen into violent commotion. The government began to restrict freedom of publication and of meeting. Finally, on April 13, the garrison of Constantinople murdered some of its officers, intimidated the Parliament and compelled a change of ministry. The Sultan designated Tevfik Pasha as Grand Vizier, and it was declared that all had been done in the interest of the Constitution and the Sacred Law.

No one in Turkey believed the declaration. It was felt that sovereign control, stricken from the hands of the Parliament by the mutinous soldiery, had been seized once more by Abdul Hamid. Prominent men of the Committee and three-fourths of the deputies went into hiding. The new régime seemed ended.

A part of the Army had upset the situation. Another part saved it. Within two weeks Constantinople was taken by supporters of the Parliament and the Committee. Abdul Hamid was deposed by vote of Parliament, followed by *fetva* of the *Sheik-ul-Islam*, and his brother Mohammed V, was proclaimed, a man not desirous of ruling.

The way had now been cleared for constructive progress. Parliament was definitely established as wielding the sovereign power of Turkey. The principle of full responsibility of ministers had been brought to the test and decided. The Army had shown itself in great majority loyal and reliable. Constantinople, for sixteen centuries recognized as dangerously excitable, had been placed under martial

law,—it has not yet been released. From that time to the present no one has questioned the dominance of the Turkish Parliament.

On May 5, 1909, Hilmi Pasha again became Grand Vizier. He held power until December 30. On December 31, Hakki Pasha, an able, just, and independent man, replaced him, and has retained the office until the present. Since the opening of the third session six weeks ago, another move has been made toward establishing solidarity between the Ministry and the majority party in the Chamber of Deputies. Hakki Pasha was required, despite some reluctance, to submit his speech on the state of the nation to a caucus of the Party of Union and Progress before delivering it in Parliament. In return, all members of the party refrained from criticizing the speech before the Chamber, and voted solidly in favor of the policy of the Ministry.

The Committee of Union and Progress, after the revolutions of 1909, established its inner circle once more at Salonica. While it has carefully maintained its organization, declared to be devoid of secrecy, it seems to have exerted no influence upon the government, except through the members of the party of the same name in Parliament. This party was at first careful to claim no high places, but beginning with Javid Bey, who was made Minister of Finance in June, 1909, some of its ablest members have been introduced gradually into the Ministry. The Party of Union and Progress has retained such a majority among the deputies, that the opposition has had to confine its efforts to the exercise of vigorous criticism. The opposition suffers also from division, since it concludes within its scanty membership a Liberal Party, a Democratic Party, most of the Greek deputies, some of the Armenians, and a few Socialists.

The Parliament has supported actively the leading principles of the Constitution, which constitute a program for the reconstruction of the nation. The methods used have been legislation, discussion, and careful control of the Ministry, in regard to which the right of interpellation has been employed freely. Chief among these principles are: the territorial integrity of Turkey; absolute equality in political matters of all citizens of Turkey, irrespective of nationality and religion; the participation of all nationalities in military service and public office; the subjection to the constitutional government of all internal interests, such as the Press and the different nationalities; the maintenance of Turkish as the official language; and the preservation of individual liberty. It is evident that these principles when applied, must conflict with each other at some points. In

particular, the reconciliation of individual liberty with the other aims has not yet been accomplished to the satisfaction of all concerned.

In amending the Constitution, the most important clauses which concern the Parliament have been those which have secured its sovereign power. The ministers are responsible individually and collectively, and must resign after a vote of want of confidence succeeding an interpellation. In case of disagreement with the Chamber, a ministry must submit or resign. Only if the new ministry and the Chamber can not agree on the matter in question, shall the Chamber be dissolved. If then the new Chamber persists in the opinion of the old, its will shall prevail. Deputies and senators have now the right to initiate legislation. The Sultan must within two months after the presentation to him of a proposed law, either sanction it or return it for second consideration. If Parliament passes it again by two-thirds vote, it becomes law. Emergency measures must be sanctioned or returned within ten days. Parliament shall convene each November first, Old Style, without being summoned. The Sultan can not abridge the four months' session, and he is obliged to summon Parliament ahead of time on the written demand of a majority of the deputies, or to prolong the session if a majority vote so decides. The Sultan is bound on his accession to take oath to respect the provisions of the Constitution and to remain faithful to the fatherland and the nation. The fate of Abdul Hamid indicates that failure to observe the promises of this oath would lead to a Sultan's deposition by the *Sheik-ul-Islam* upon demand of the Parliament. The approval of Parliament has been made necessary for treaties which concern peace, commerce, the cession and annexation of territories, the rights of Ottoman citizens and any expense for the state. Thus by fundamental law the Parliament has been confirmed in complete sovereign control.

Other amendments increase the salary of deputies to $1320 per session with $220 a month during prolongation; give closer control over the budget; and permit the Senate to sit behind closed doors, without however excluding the deputies from the hall of meeting. All these amendments date from the first session of Parliament. A number of others were during the second session voted by the Chamber of Deputies, modified by the Senate, and returned to the Chamber of Deputies for further consideration.

Both houses have labored upon laws designed to carry out the provisions of the Constitution. Chief among those so far enacted is

that providing for the military service of Christian Ottomans. The promotion of army officers has been regulated, and the pension system has been revised. The administration of justice has been improved somewhat, primary education has been encouraged, and a beginning has been made of the decentralization of local government by establishing special régimes for Yemen and Bagdad. The budgetary and other bills relating to finance have constituted the largest single task of each session. Revenues have been increased and retrenchments have been made. But owing to the desire to make the Army thoroughly fit, to acquire a navy, to pay salaries regularly, and to increase the appropriations for education and justice, the budget still fails to balance by from 25 to 30 million dollars a year, or by about one-fourth of the revenue. Thus a series of loans has been found necessary, increasing the already heavy burden of debt. A number of important laws concerning the reorganization of justice, the civil service, higher education, and the like, are pending.

Other legislation than that connected in some way with the Constitution has not as yet found much place. Most such laws that have been passed concern economic matters, such as concessions of various sorts, the encouragement of agriculture, and copyrights. The law which attempted to settle the ownership of disputed Christian churches in Macedonia has displeased all the contestants, which indicates that it may be approximately just.

As regards the sum total of work done, the Parliament passed 53 laws during the nine months of the first session and 65 during the six and one-half months of the second session. Several hundred motions and interpellations were discussed and about 10,000 petitions were considered, during each session. The first session lost time from the necessity of getting organized and from the double revolution of April, 1909. The second session was interrupted seriously by the burning of its palace of meeting and the destruction of its records in January, 1910. Considering that the Parliament has been serving as both a legislative body and a constituent assembly, that the Senate exercises also the function of passing upon the constitutionality of laws, and that the Parliament has kept a very close control over the Ministry, the amount of legislation would seem to be creditable. Further, it is undoubtedly true that conservatism and caution in the Parliament's present situation are far more likely to achieve permanent results than radicalism and precipitation. The institutions which are to rejuvenate enduringly an old and disordered country can not be fashioned hastily.

The Turkish Parliament, all things considered, may be pronounced to have been so far distinctly successful. It has learned to exercise sovereign control, and has fixed its position by constitutional law. It has attacked carefully the series of exceedingly difficult problems that presented themselves, and has solved some and made progress toward solving others. It has maintained a high sense of its responsibility and a vision of future greatness for its nation. It has held the allegiance of the Army and the *Ulema*, and apparently of a substantial majority of the thinking and influential populace. It has entered into the international life of Parliaments, by exchange of visits and felicitations.

One can endeavor to look ahead in Turkish affairs only with the greatest reserve. The Parliament, barring a serious quarrel with the Ministry, has still before it nearly two years of life. In case of dissolution in the near future, the same organization that procured its election would probably be able to return most of the present deputies. A dangerous crisis brought on from within is therefore unlikely. That which is more to be feared is a total subversion of the constitutional régime. This again, while quite possible, does not seem probable, for nearly all in Turkey were heartily sick of the old ways. Each day of continued power strengthens the new government. Great caution is needed lest the active hostility of certain elements be aroused dangerously. The present leaders are well aware of this, and it would seem safe to look forward with much hope to the permanency of the Turkish Parliament's rule.

THE PROPER ORGANIZATION AND PROCEDURE OF A MUNICIPAL COURT

BY HON. HARRY OLSON

Chief Justice of the Chicago Municipal Court

Dissatisfaction with the Administration of Justice

Public attention has never been attracted to the subject of law reform in the United States as universally as it is at the present time. In the States and in the large cities of the country especially, there is more or less dissatisfaction with the manner in which justice is administered. This dissatisfaction grows out of a failure to secure expedition and thoroughness in the enforcement of public and private rights in our courts, and as President Taft has said, may be summed up in the words, "Undue delay."

The causes of this undue delay in the expedition of business in our courts in the last analysis will be found to be due to: (a) multiplicity of courts, each with a different or overlapping jurisdiction; (b) a lack of organization of the courts into a related system; (c) defects in practice and procedure; (d) the personnel of the bench, and it might be well to add; (e) the personnel of the bar.

Of the above causes the one most frequently pointed out, and as to which most remedies have been suggested, relate to defects in practice and procedure. While the necessity for procedural reform has been urgent in most jurisdictions, there are other problems connected with the administration of justice which need first to be solved. The courts must be organized in order that there may be organization of judicial business. The most important proposal that can be made for the improvement of the administration of justice in the different states and in the large cities especially, is that the court system should be organized into a coördinate machine. When all of our courts are organized into a unified system, and as courts of record, it will become next in importance to regard with care the personnel of the bench, to improve which it will be necessary to change the method

of selection of candidates for the judicial office, to extend the tenure of office of the judges and to increase their compensation. When we have attended to these matters it will then be timely to make a through-going reform in our court procedure.

A great measure of the modern dissatisfaction with our courts of law arises out of the mistaken idea, still pervading their organization, that the principles of administrative law are as sacred and bound to the dogmas of the past as are the fundamental principles of right and justice.

Note the backwardness in the development of administrative law as compared with other scientific progress. As soon as a modern scientific invention is found useless it is discarded to make way for a later and more useful improvement. Changes of the law are so slow that improper and useless principles fasten themselves upon our institutions and become difficult to dislodge. Lawyers and judges learn ways of doing things, decisions of courts are multiplied construing enactments, so that it is not until great and positive abuses multiply that such enactments can be discarded.

Business men complain of the long delays in the disposition of civil business in the courts; the public as a whole demand greater expedition and certainty in the enforcement of the criminal law while lawyers, judges and legislators—the latter influenced by the former —resist such reforms as best they can. When forced to act they go no further than necessary to placate temporarily.

Our legislators have not heretofore taken up the subject of law reform in a thorough-going manner, but have sought to relieve conditions by sporadic amendments of statutes on procedure and the occasional creation of a new court—new only in name. Such methods of reform are illustrated in my own state where the legislature sought to allay dissatisfaction with the administration of justice that appeared from time to time, by creating new courts with new names, to take the place of the old, with little difference in organization, jurisdiction or procedure.

The people of Chicago since its incorporation in the year 1837, have had *four* city courts and *six* courts of the county. There was no practical difference in the organization amd jurisdiction of these courts. They merely differed in name. The superior and circuit courts of Cook County are practically branches of the same court, having precisely the same jurisdiction. True, there is this difference —it is necessary to have a clerk for each court, and under the law

as amended last year, the salary of each clerk was increased to $9,000 per annum. Double the number of sheriff's deputies are required that would be necessary if the courts were combined. According to an immemorial usage the process of the circuit court is on white paper, while that of the superior court is on yellow, otherwise the functions of the two courts are identical.

Justices of the peace, those barnacles of jurisprudence that have been the bane of many a community, existed for many years until the city was relieved of them in 1908, when the municipal court of Chicago was established.

The circuit, superior, county, probate and criminal courts in Chicago were firmly entrenched by the constitution of 1870, and it is now impossible, without a constitution amendment to further change them, even in name. These changes doubtless were made to satisfy a recurring public demand for reform in the administration of justice, but through them no substantial reform was effected in organization, administration or procedure. Lawyer-legislators, wedded to the defects of the common law, saw to that.

No progress was made in expediting the administration of justice by changing the names and the jurisdiction of these courts.

At the present time in the State of Illinois (and for Illinois might be substituted almost any State in the Union) a large number of unrelated courts exist, such as the supreme court, the appellate courts, 4 intermediate courts of review, 67 circuit courts, 105 county courts, 18 city courts, 7 probate courts and the justices of the peace outside of Chicago to the number of 3300.

No accurate statistics of the volume of litigation conducted in all of these courts in the State of Illinois are available. Each court has been a separate court, and judicial statistics have not been kept. Inquiries of the clerks of the various courts of the State made by me two years ago brought answers that disclosed the fact that there are about 40,000 cases, common law, chancery and criminal, brought annually in the State of Illinois, exclusive of the cases brought before justices of the peace. In the circuit, superior, criminal and county courts of Cook County, in which the city of Chicago is situated, approximately 20,000 cases are brought annually. In the municipal court of Chicago there are brought annually 136,000 cases of which about 40,000 are of the same general class as brought in the circuit and county courts of the State. To this volume of litigation must be added that brought before the justices of the peace of the state

outside of Cook County. Each court in the different districts, counties and cities, has its own organization, independent of that of any of the others.

A mere statement of these facts suggests that this multiplicity of courts and officials is unnecessary. The first proposal, therefore, for the improvement in the administration of justice in most of our States that would seem desirable is the organization of our courts into a coördinate machine. The American Bar Association has recognized that the judicial power of the State ought to be vested in one great court of which all tribunals should be branches, departments and divisions. Considerable time must elapse before this recommendation of the American Bar Association can be adopted. In the meantime the courts of the large cities of the country must be reorganized. As a first step, the offices of justices of the peace and constable should be abolished wherever they exist.

The justices of the peace and constables came to us as they came to this country—with our adoption of the English system of jurisprudence in minor cases. Indeed, in antiquity the office of constable vies with that of king. The office of justice of the peace was created by a statute in the reign of Edward III in order to stop brigandage, which still flourished in England. It was a common practice for robbers to seize persons and hold them for ransom. As a reversal the offices of justice of the peace and constable were abolished in Chicago.

The system of jurisprudence for minor cases as represented by these officials, while often satisfactory in rural districts has been found generally unsatisfactory in large cities of the country. The rapid growth of the cities in the United States has presented many problems of administration. In the matter of public improvement, the population has grown so rapidly that we have constructed them for temporary purposes only, to keep pace with the needs of the population, and it is not surprising that reforms in the administration of the law, always slow of accomplishment, should have waited so long. The abuses which led to the abolishment of justices of the peace and constables in the city of Chicago are common in the great cities of the country where these officials are maintained. Capable judges are demanded for cases involving small sums of money as well as larger sums. The justice of the peace system originated when there were no such means of communication as there are at the present time. Under present conditions of travel,

and especially in the city, it will be no hardship to bring the smaller cases to trial at central points. Nearly half of the cases tried before justices of the peace in the State of Illinois are appealed to the Circuit Court for a re-trial. One trial of petit cases involving sums of less than $500 should be sufficient and will be if judges of the approved ability are chosen.

ORGANIZATION OF A MUNICIPAL COURT

In framing legislation for a municipal court it is well to keep in mind that the court is not an adjunct to the city administration.

"A municipal court is a State agency for the administration of justice within the territorial limits of a city. It is to a large extent separate and distinct from the other branches of the city government. While such court in a general sense is a part of the government of the city wherein it sits, it is not so in precisely the same sense as are the executive and legislative agencies of the city government." It is also important that the jurisdiction of a municipal court should be exercised by branch courts, each of which should exercise all the powers vested in the court.

Another important feature of the law creating a municipal court should be that which gives the judges wide power in the management of the court on its purely administrative side. They should have extensive powers to prescribe all rules and regulations for the proper administration of justice as to them may seem expedient, including rules and regulations of practice and procedure. In most of the nisi prius courts of the country the judges are subject to numerous rules of practice prescribed by the legislature. A failure to comply with these rules renders a judgment subject to reversal by a higher court, regardless of the correctness or incorrectness of the decision of the court upon the merits.

Pleading and practice were orginally the work of the courts. The legislature should never have attempted to take them over and adjust their minute details. Judges capable of deciding matters of substantive law ought to be entrusted with wide discretion in working out the details of adjective law.

On its administrative side the judges of a municipal court should have power to fix the number and salaries of the deputy clerks and bailiffs; they should have general supervision of the offices of the clerk and bailiff; they should have power to pass rules and regulations gov-

erning these offices, and should have power to remove deputy clerks and deputy bailiffs with or without cause by entering a proper order. They should act as one body in adopting and considering rules for the purpose of effectively administering justice. Such a court should be presided over by one of their number who should have powers in addition to the other powers of a judge of such court. He should be elected by the people and not by the body of judges. He should be charged with the general superintendence of the business of the court; preside at all the meetings of the judges; assign the judges to duty in the various branches of the court from time to time. He should superintend the preparation of calendars of cases for trial in the said court, and make such classification, and distribution of the same upon the different calendars as he deems proper and expedient. He should determine when each judge shall take his vacation. He should have the power to create a new branch court at any place within the city by merely signing an order to that effect. The facility with which a new branch court of domestic relations was established in Chicago will serve as an illustration. It required merely an order of the chief justice designating the branch court and an assignment of a judge thereto, with slight changes of the rules to institute the court. To accomplish the same result New York City was obliged to secure legislation from the State legislature.

The creation of such an office with its dual duties, administrative and judicial, will enable the public to locate the responsibility for failure of the court to meet the object of its creation, and few things can go wrong in the administration of a court so organized without this official being accountable for it. In large cities of the country the expenditures incident to the maintenance of such court and the receipts thereof by reason of the large volume of business will be considerable.

The receipts of the Chicago municipal court for the year 1910 were $795,000 and its expenditures $756,000. An institution with such large expenditures and receipts requires an executive head.

A troublesome question in the organization of courts is whether judges should always sit in those branches where business in which they are specialists is disposed of. In the municipal court of Chicago it has been found convenient and satisfactory to the bench and bar for one judge, specially trained in certain branches of commercial law, to sit most continually in the branch of the court where special statutory actions, such as cases in attachments, garnishment and replevin, are disposed of.

A larger share of criminal work has often fallen to particular judges especially adapted to that class of work, and those whose specialty has been more in civil work have sat in the civil branches, but nevertheless there has been a measure of rotation among all the judges.

One of the irksome things about a judicial position is the sameness of the work from day to day. The constant hearing of cases of very much the same character may make the judge specially trained as to the law applicable to such cases, but he will feel the mental wear sooner and not be able to handle the business with the same grasp as if there were frequent rotation among the judges, not only as regards classes of business before the particular branches, but also as respects the character of litigants and attorneys appearing before the court.

Change of scene and surroundings has usually been found quite acceptable to the judges, which more than compensates for the labor of fitting themselves in the several branches of the law. This is found especially true in criminal cases, where several months of exacting grind and nervous strain makes the judge desire a change.

Presiding one year over a branch of court in which quasi-criminal cases are tried would make judges out of many jurists and enable them to better adjudicate causes of a graver nature.

The committee appointed by the National Conference on Criminal Law and Criminology held in Chicago in 1909, after having spent four months in England attending the sessions of the courts there, reported that "the English people do not regard with favor the idea of a judge having jurisdiction only in criminal cases and whose whole time is taken up in this kind of work. . . . . Experience has shown that men who try criminal cases only are apt to lean too strongly toward or against the prisoner."

The judges should be required to meet each month except during vacation, for the purpose of considering such matters as may be brought before them pertaining to the administration of justice in the courts. At such meetings they should receive and investigate all complaints presented to them pertaining to the court and to the officers thereof, including judges, clerks, bailiffs and police officers.

The police officers of a large city should be ex-officio bailiffs of the municipal court and should serve process in all criminal and quasi-criminal cases. The court will then have the power to regulate the conduct of police officers in their relations to the court.

The judges of the municipal court of Chicago who have these powers, have had occasion to exercise them within the last four years in reference to officials of every department of the court. They have discharged clerks and bailiffs for malfeasance in office; and regulated the service of warrants by police officers. The police department had a rule reading as follows:

> Patrolmen, except those detailed at the detective bureau, shall not execute a warrant of arrest or a search warrant without the consent of their commanding officers, unless such warrant is endorsed by the General Superintendent or the commanding officer of the detective bureau.

Manifestly this rule was in conflict with the law. Warrants were under this rule, sometimes not served or returned according to directions to superior officers, and the responsibility for failure to serve or return was not placed upon the individual officer. On one occasion a former chief of police and chief of detectives, following this rule of the police department, undertook to determine that certain search warrants calling for gambling devices should not be served, on the ground that the articles mentioned were not gambling devices, and through the law department of the city the court made it clear that the warrants were the court's process; that the officers were the officers of the court, and that a failure to serve the warrants would bring the officials in question into contempt of court and that imprisonment would follow, as a consequence of such contempt.

A warrant record was thereupon established by the judges of the court and made, by general order of the court, a public record, which it is a highly penal offense to alter, falsify or in any way to deface. Warrants are required to be returned to the court with complete returns thereon, signed by the officers making them, showingthe dates of receipt and return. Protection and favoritism through the non-service of warrants issued by the court or by means of incomplete or incorrect returns is therefore made difficult, without subjecting the officer responsible therefor to the risk of exposure and punishment.

This court under the law was obliged to regulate the conduct of one of its own members who had, according to the findings of a committee of the judges appointed to investigate his judicial acts, imprisoned persons in the county jail without bail; who had in the first instance tried offenders and found them not guilty, and at subsequent dates changed this finding and found them guilty on the same charge and in

the same case; who had found defendants guilty upon trial and at subsequent dates had sentenced them a second, and in some cases a third time, and to pay even heavier fines for the same offense, on the same complaint, and in the same case; and who had assumed, in addition to the judicial powers, the power of the legislature to make new laws and the power of the executive to pardon offenders, to grant reprieves and to commute the sentence of those guilty of violations of the law.

The committee of judges reported back to the full body of the court, the judge whose actions were questioned by his brethren was heard in his own behalf, and on recommendation of all judges of the court present and voting, he was removed by the chief justice from the trial of criminal causes altogether. In no other court of this country could these results have been effected except by impeachment proceedings brought before the legislature.

In case a scheme for more uniform courts is adopted, it becomes highly important to provide some method that will bring capable judges to the bench of such a court. In the large centres of population bar associations should have the right to place in nomination for judges on the official ballot the names of candidates to be voted for. The fact that a name appears among the list nominated by the bar association should not prevent the placing of the same name upon the ballot of any political party. In counties of 50,000 population or less it is not so necessary that the bar associations should act as in the larger cities. The people in the smaller counties are generally familiar with the ability, qualifications and character of the candidates for judicial office, most of whom are known personally to the members of the bar and to a majority of the inhabitants of the county. Not so in the larger cities. Here the public need the guidance of the collective opinion of the lawyers.

The endorsement of a bar association, of right, should carry great weight. I asked a lawyer of Winnipeg how the principal judge of Winnipeg was selected. "Oh," he replied, "he is appointed by the king." I asked if he was satisfactory to the bar, whereupon I was told that the bar association of Winnipeg had recommended the candidate that was appointed. No doubt he was satisfactory to the bar and to the people, even though he was appointed by the king thousands of miles away!

Bar associations should do more than recommend candidates. They should vigorously oppose the unworthy by making the people

acquainted with their demerits. The tenure of office of a judge should be long enough so that capable men can leave their practice and stand for the office with the assurance that if elected they will hold office for a sufficient length of time to warrant them in making the change from private practice. The public is quick to appreciate the value of experience on the bench and will generally retain a capable and high minded official, especially when the judicial elections are held separate from general elections for other public offices. The term ought not to be so long, however, that the judge becomes forgetful of the fact that he must render an account to the electors in what manner he has served them. The personnel of the Bar has much to do with the success of the court in dispatching its business accurately and expeditiously. A high standard of educational qualification, and of character as men must be insisted upon for the lawyers, if these officers of the court shall be fitting assistants in the administration of justice.

JURISDICTION

As a part of the judicial machinery of the state a municipal court in a large city should have general jurisdiction in both civil and criminal cases. In the courts so far organized in our cities there has been a tendency to limit the civil jurisdiction to cases involving sums not over one thousand dollars, and the criminal jurisdiction to preliminary hearings on charges of felony and misdemeanor, and they are generally given summary jurisdiction in cases of violations of laws or ordinances not classed either as felonies or misdemeanors.

The administration of criminal justice in a large city is certainly one of the principal functions of a court created especially for its needs. The prompt punishment and suppression of crime is essential to the welfare of its law-abiding inhabitants. A municipal court should therefore have the widest jurisdiction in criminal cases. If the municipal judge sits as an examining magistrate with only power to bind over to the grand jury, the grand jury will sit in review, often without having before it the evidence heard in the municipal court. Indeed, in Chicago a grand jury "no-billed" 68 cases sent to it by 13 different judges of the municipal court, and heard only 81 witnesses, while the judges of the court binding over had heard 300 in the same cases. This procedure involved a duplication of work, annoyance to the prosecuting witnesses, extra expense to the tax-payers, and

brings about long delays in the very class of cases in which expedition counts for so much in the proper administration of justice.

A municipal court should have the right to hear all criminal cases, felonies and misdemeanors, by information and without the intervention of a grand jury.

The presenting of an indictment by a grand jury is a mere matter of practice and procedure. The supreme court of the United States has held that proceeding by information in a criminal case is not opposed to any of the definitions of the phrase "due process of law," but is a proceeding as strictly within such definitions as is a proceeding by indictment, and that a proceeding by information takes from a defendant no immunity or protection to which he is entitled under the law. It would be a proper provision to provide that in the municipal court the trial of the accused on information should not take place until there has been a preliminary examination. Such is the practice in California. It might be wise, also, to provide that the trial of the accused should be before another judge than the one before whom the preliminary examination has taken place. With such jurisdiction in the municipal courts of our cities the administration of the criminal law will be expedited as speedily as it is in England.

It is not so necessary that a municipal court should have wide civil jurisdiction. That will depend upon the requirements of the particular community. The municipal court of Chicago was originally given wide jurisdiction in both civil and criminal cases.

Generally it is best to give the court wide civil jurisdiction, for in that case the community can afford to employ capable judges, while on the other hand, with a limited and minor jurisdiction, less capable judges will be selected, and an inferior court, in personnel as well as in jurisdiction, will result.

PLEADINGS

The pleadings in a municipal court, especially in view of the volume of business brought to such court,should be as simple as possible. President Taft has advocated the appointment of a commission to reform procedure in the federal courts,and similar commissions in the state courts are at work in Massachusetts, New York, and other states. The judges of the municipal court of Chicago have acted along the same lines under the express powers conferred upon them, and have abolished technical common law pleadings in all cases, and substituted in lieu thereof simple and straight-forward statements of

claim and affidavit of merit in defense, which must set out the essential facts upon which each side relies. The practice so prescribed was in use in the municipal court of Chicago in cases involving less than $1,000 and the success of the court during three years in disposing under this practice of the vast number of cases brought in the court prompted the extension of the practice to cases involving larger sums than $1,000.

The greatest change in the new practice, aside from abolishing technical pleadings, is found in the rules doing away with the so-called general denial commonly filed by the defendant, which naturally gives the plaintiff no notice whatever of the nature of the defense that will be set up at the trial. Such a pleading evidently serves no good purpose, and often results in hardships and injustice where the plaintiff is taken by surprise at the trial. Under the new rules the defendant will have to specifically deny each fact that the plaintiff alleges, and if he fails to do so, such fact will be taken to be admitted.

These rules enable the parties to have cases tried on the real merits and in accordance with the demands of justice. They embody some of the best features of the procedure of the English courts. In every pleading a certain amount of detail is necessary to ensure clearness and to prevent the other party being taken by surprise. In general there must be particulars sufficient to apprise the court and the other party of the exact nature of the question to be tried, and what these are will depend upon the facts in each case. It is surprising how succinctly can be stated by both the plaintiff and defendant the points of claim and the points of defense. That which is admitted need not be tried by the court; only the issue in dispute, thereby shortening the time of trial considerably.

Both under the common law and code pleading it has been necessary to state in the pleadings all the material facts constituting a cause of action, while under the simplified system in use in England to-day, only the nature of the cause of action needs to be stated. Here is a specimen pleading in a case for breach of promise to marry:

The plaintive has suffered damages by breach of promise of the defendant to marry her on the day of , (or within a reasonable time which elapsed before the action).
Defendant refused to marry the plaintiff on the day of .
The plaintiff claims, etc.

Under the common law system the story of the plaintiff's cause of action would equal the length of this address.

SHOULD BE A COURT OF RECORD

Every court should be a court of record. The volume of business in the municipal court of a large city furnishes a problem in record writing if economy of operation is to be attempted, for in it is brought, in addition to the civil and criminal causes incident to the business and population of such a city, a vast number of cases growing out of violation of numerous city ordinances not known to exist until violated by a large number of our foreign born citizens who concentrate in the cities.

In such a court, improvements must be made in the ancient form of record writing. This question of writing and preserving records has ever been troublesome. Under the early common law it was the duty of the clerk of the court to enter upon the roll of the proceedings all of its orders, judgments and decrees. The proceedings of each day were so entered as to be read the next morning and then signed by the judge, very much as the minutes of each day's proceedings of a parliamentary body are read and approved. Under the later English practice, evidently because of the increase of business, the proceedings are seldom entered on the judgment roll unless it was absolutely necessary to do so for the purpose of bringing error or for the purpose of evidence, or the like. The judgment roll was on parchment and was deposited in the treasury of the court that it might be kept with safety and integrity. The judgment when thus entered upon the judgment roll was carefully preserved, but in most cases it was considered unnecessary to so enter it. The proceedings of the court were usually evidenced by slight memoranda. It is curious that the proceedings of courts of record which import verity and against the truth of which nothing can be alleged, should in so many cases be left to the uncertainties of slight memoranda. We find that even in Blackstone's time, speaking of the keeping of the record in criminal cases, he says that it was the usage for the judge to sign the calendar or list of all the prisoner's names with their separate judgments in the margin, which was left with the sheriff, and that for a capital offense it was written opposite to the prisoner's name "let him be hanged by the neck," formerly in the days of Latin an abbreviation "sus. per col." for "suspendatur per collum," and that this was the only warrant that the sheriff had for so material an act as taking away the life of another. He comments that it may certainly afford material for speculation that in civil causes there

should be such a variety of writs of execution to recover a trivial debt issued in the king's name and under the seal of the court, without which the sheriff could not legally stir one step, and yet that the execution of a man, the most important and terrible task of any should depend upon a marginal note.

Orders of court have heretofore been entered pursuant to three different methods. By the first method, a minute clerk took brief memoranda in court and turned them over to a record-writer to expand into complete orders, but which record-writer not having heard what transpired in court often misinterpreted such memoranda. Hence mistakes, new trials, appeals, delays and expense resulted. A second method was that of requiring counsel to prepare draft orders and present them to the court for approval and entry. Experience showed that this was unsatisfactory, for it was an unnecessary burden upon counsel to require them to prepare simple forms of orders when the court has or should have an approved standard or form. Counsel do not usually prepare a draft for entry until a decision of the court indicates the kind of order to be entered, or the court or clerk is consulted as to whether there is a fixed form, and then it is often hurriedly prepared in court, or it may be the result of a hurried compromise of opposing counsel in court trying to meet the decision just announced, all of which tend to inaccuracy and a method of procedure unique in each case. Orders may often be entered in a number of different forms, all having, as the courts may ultimately hold, the same legal effect, yet divergence in form may create divergence in opinion among counsel as to legal effect, and hence the loss of time of the courts in interpreting such orders.

A third method of entering orders is the abbreviated form method by which abbreviated orders have the same force and effect as if the orders were entered in full. Such methods are loose, and such records will often be called in question after the cases have been disposed of. None of these methods seem suited to the necessities of a court founded upon modern business methods.

In the municipal court of Chicago still a fourth method of writing orders has been devised. By it the chief justice of the court has prescribed certain amplified forms of orders and judgments, and for each form so amplified there was also provided an abbreviated form, so that whenever it is desired to make a record pursuant to this amplified form the clerk enters the same pursuant to the abbreviated form, the amplified form to constitute the order of judgment of the

court. The docket was dispensed with, and from the minute book or memorandum sheet there is written directly in the complete order book these orders in the prescribed abbreviated form. Whenever it is desired to use any record outside of the court the same is written in such amplified form and attested by the clerk. The orders of the court under this fourth method of writing do not admit of interpretation or construction in the light of extraneous matter, such as previous orders or files in a cause, which is so often done in the loose methods of abbreviating orders, but each order indicates with mathematical accuracy and in the exact form that has been appoved by precedent, in just what language the order of the court is to be. The orders in civil procedure in the municipal court have been written out in full, where they comprise 2,449 separate orders and are contained in two large volumes containing 2,125 typewritten pages, but by a system of condensing and systematic arrangement of the various parts of orders, the same orders have been condensed into 154 orders contained in 132 ordinary printed pages. Each one of the clerks is provided with a copy of this printed order book and from it he can select the orders directed to be entered. Those orders that are of unusual character must be written out in full from draft orders, but it is found that the order book covers most all of those found necessary. Instead of a great number of men being used as expert record-writers there are less than twenty copyists writing all the records of the court in 136,000 cases annually from the memorandum sheets delivered by the minute clerks. This system leads to accuracy and few practice questions are presented to appellate courts for review.

APPEALS

A municipal court should not only be a court of first instance in all cases, but appeals from its judgments should be by way of review of the record and not trials de novo. Courts of review should reverse only for substantial errors, affecting the merits, and not for errors of practice or procedure, unless injustice has been done.

JUDICIAL STATISTICS

Little attention seems to have been paid in the United States to the matter of keeping judicial statistics. Accurate statistics scientifically prepared are of the greatest importance in determining what recommendations for legislation, if any, shall be made, and in supply-

ing the data to public officials and others who may inquire into the conduct of judicial administration. Such statistics are highly beneficial to the judges of the court in bringing before them from time to time facts regarding the status of the work in the courts. Without such information no effective or concerted action for the improvement for the administration of justice can be invented.

Improvement in the administration of justice of both the civil and criminal law, will follow upon an accurate information and publicity regarding conditions under which the law is administered, and of society as revealed by the work of the courts.

In addition to the keeping of judicial statistics of the business of the court, a complete system for recording the data concerning criminals should be kept to embrace all the essentials for compiling complete criminal statistics along the lines of the recommendation of Committee A of the American Institute of Criminal Law and Criminology. Such data can only be collected in a court organized on modern business principles. Judicial statistics have been kept in the Municipal Court of Chicago from the first year of its organization. They have been perfected from time to time. The entire record of a criminal case in the municipal court of Chicago is written on a single page of a record book and shows:

(1) Manner of conducting proceedings, (by complaint or information).
(2) Offense charged.
(3) Date of offense and date of complaint or information.
(4) Pleas. Guilty (with statement of precise defense which plea admits. Not guilty and nolle contendere.
(5) Disposition other than by trial. (Information or complaint quashed, nolle prossed, dismissed because defendant was not apprehended, non-suit entered.
(6) Mode of trial (by court or by jury).
(7) Verdict. (In case of lesser offense than originally charged, a statement of lesser offense.)
(8) Character of sentence. (Whether executed or suspended.)
(9) Appeal and result.
(10) Institution to which sent.
(11) Whether fine was paid, and date of payment.
(12) Period of commitment for non-payment of fine.
(13) Date of release from imprisonment and reason therefore. (Pardon, vacation of sentence, payment of fine, termination of sentence.)

The following facts in addition regarding the social status of the defendant is recorded: Age, sex, color, race, birthplace, birthplace

of parent, conjugal conditions, education, occupation, citizenship and previous convictions.

The statistics of crime, although not an absolute index of the amount of crime in the city, as many offenders are never caught, or no proper effort is made to bring them before the court, the figures are correct so far as the records reveal: from them can be determined:

1. The growth or diminution of crime, and whether or not courts and police have contributed toward its suppression.
2. In what portions of the city any certain class of crime predominates.
3. Whether crime centers have moved or remained stationery.
4. Manner and efficiency in which the various branch courts perform their functions. Not only the methods by which the court deals with offenders, but who and of what sort the offenders are.
5. The amount of business transacted and the manner of its disposition by the various judges.
6. Whether or not public officials are active in instituting proceedings against offenders.

SOME RESULTS IN A COURT ORGANIZED ALONG THE ABOVE LINES

The act creating the municipal court of Chicago contains most of the provisions mentioned herein as desirable for a municipal court. It may be of some interest to note the results of four years of operation of such a court.

Following is a table of the suits filed and disposed of in different classes during the years, 1907-08-09-10:

	CIVIL	CRIMINAL	QUASI-CRIMINAL
1907			
Filed	37,104	15,079	45,535
Disposed of	30,877	13,755	44,472
1908			
Filed	49,002	10,187	56,698
Disposed of	46,845	10,467	56,742
1909			
Filed	47,113	10,057	62,019
Disposed of	48,490	10,130	61,871
1910			
Filed	48,267	9,559	70,703
Disposed of	48,549	9,825	70,479

The receipts and expenditures of the court for the four years were as follows:

	TOTAL RECEIPTS	EXPENDITURES
1907	$669,952.01	$650,721.95
1908	722,804.57	743,343.11
1909	700,401.58	738,691.16
1910	795,111.94	756,000.000

During the year 1910 there were disposed of in the court 87,922 criminal and quasi-criminal cases. Eighty per cent of these were disposed of within 24 hours of arrest and 90 per cent within two weeks.

During the year 1910, 48,267 civil suits were filed and 48,549 were disposed of. The average time in which these cases were tried from the day of the commencement of suit varied from five days in non-jury cases to two months in those in which there was a jury trial.

Money judgments were rendered as follows: 1907, $1,501,460.71; 1908, $3,268,361.94; 1909, $3,757,090.55; 1910, $3,593,683.40.

The number of arrests decreased about one-third the first year of the court. The following table will show the number of cases of felonies, misdemeanors and violations of city ordinances filed during the years 1907-08-09-10:

	FELONIES	MISDEMEANORS	VIOLATIONS CITY ORDINANCES
1906 J. P. Regime*	12,561*	8,908*	71,507*
1907	No record†	15,079	45,535
1908	8,249	10,187	56,698
1909	6,524	10,057	62,019
1910	7,701	9,559	70,073

*Compiled from Police Department figures. Approximately correct only.
†Not a court proceeding. Judges sat as examining magistrates.

The following table shows the number of cases appealed to the Appellate Court for the First District of Illinois during the four years from the institution of the Municipal Court to November 30, 1910:

Cases appealed			1,815
Affirmed	248		
Dismissed	489		
Supersedeas denied	66		
Stricken off	1		
Transferred to Supreme Court	5		
		809	
Reversed	222		
		1,031	
Pending		784	
			1,815

The percentage of reversals of the total number of cases appealed and disposed of during these four years was 21.5 per cent. When the total number of cases reversed is compared with the total number disposed of in the court—474,311—it will be seen that the percentage of reversals will be slightly less than one-tenth of one per cent.

These figures indicate that the great percentage of all the cases brought are finally terminated in the court of first instance.

DELAYS AND REVERSALS ON TECHNICAL GROUNDS IN CIVIL AND CRIMINAL TRIALS

BY EDWARD J. McDERMOTT

Louisville, Kentucky

The commonly accepted theory of writers and speakers on public affairs is that, when evils become very great, they provoke such a revulsion among the people that a reform is inevitably produced, but Herbert Spencer said that, when evils become deep or widespread and are generally recognized, they become incurable. The most popular and most universally accepted theory in this country, especially among persons of an optimistic temperament, is that we are always becoming better—that we are always rising to a higher plane and always making progress; but Walter Baghot clearly proved that the progressive status is the unusual status; that the stationary condition is the normal condition of nations. A German poet said:

> Die Welt, die bleibt wie immer
> Nur die Menschen werden schlimmer.

However we may regard these conflicting theories, it is clear beyond doubt that no country can make any great advance and no deep-rooted evil can be remedied without the creation of a clear, vigorous and firm public opinion in favor of reform.

We have made wonderful improvements in discoveries and inventions to save time, labor, cost and waste and to lessen distances; but in the courts we still move as slowly as the travelers that in olden times creeped along in ox-carts and canal-boats. We have made wonderful improvement in science, medicine and surgery; but we have made few improvements in the science of government or in the administration of justice. In all the departments of human activity, except the last two mentioned, men will readily accept teaching and advice from their superiors in ability, skill and learning and will readily yield to proper leadership; but, in governmental affairs and in the administration of justice, the ignorant or self-seeking leader can

always muster a large following for any error or hoary wrong. The physicians and surgeons of the country and the medical experts, acting with remarkable unity and intelligence, have accomplished wonders in the advancement and progress of their science in the past fifteen years; but, only within the past five years, have the better elements of the Bar and the Bench begun to rub their eyes and to become thoroughly awake and to bestir themselves with a desire to imitate the improvements made in England and in Germany within the past thirty-five years and to demand reforms. This change of attitude has been due, in a large degree, to the scientific study and philosophic view of the law as a science in the great law schools of our country.

The Common Law of England, as we know it and practice it in this country, has been slowly built up, like a coral reef, upon a mass of individual instances and innumerable precedents. Such a system, discouraging broad, philosophic principles, naturally and inevitably, begets an intense conservatism in its votaries. Hence, as James Bryce said, in an address to the American Bar Association in 1907, the following were for ages the accepted theories of English and American lawyers:

> Stare super antiquas vias. . . . Nolumus leges Angliae mutari . . . . It is better that the law should be certain than that the law should be just. . . . An ounce of precedent is worth a pound of principle. . . . With the love of certainty and definiteness there goes a respect for the forms of legal proceedings and for the precise verbal expression given to rules. This is a quality which belongs to most legal systems in their earlier stages.

That the law of rights—that the substantive law—should be made as certain and definite as possible, so long as the rational and immutable principles of justice are observed, is clear, but it is equally clear that the mere rules of procedure—that the adjective law—the technical rules governing the pleadings, the evidence, the instructions of the court and the procedure in the trial or appellate court—should be simple, flexible and subordinate and should always allow the court, without delay and without a second trial except in rare and extreme cases, to decide the dispute solely according to the fundamental principles of the substantive law. To bring about such a condition radical changes are necessary (1) in our Constitutions, (2) in our codes and statutes and (3) in the mental and moral attitude of the lawyers at the Bar and on the Bench. Reforms in the Constitutions and in

the Codes and Statutes will become efficient only after long delay and strenuous effort unless the judges who are to interpret them can be radically changed in the habits and opinions of a life-time. Therefore it is not only necessary to make the need of reform clear, but the need of it must be incessantly dinned into the ears of the lawyers and the people until public opinion becomes so distinct and strong that dull, conceited or stubbornly conservative lawyers can not resist it.

Vain or antediluvian judges indulge in hair-splitting decisions either because they hope to appear as ultra learned, shrewd or logical or because they are really indifferent to the duty of deciding a case according to its merits as determined by the substantive law. Sometimes they are eager to give a decision for the party fairly entitled to win, but, with the erroneous belief that they have not the power to do it on the record, they hunt zealously for some petty technical reasons, based on the adjective law appearing in the record, to justify a reversal and thus they increase the chance that another meritorious party will fall into a pit-fall in a later case.

Sometimes a judge resorts to such a hair-splitting decision in a criminal case because he does not himself approve the law to be enforced or because his sympathies (acquired when he was himself defending criminals at the Bar) are really with the men who have violated the law. There is no chance for a quick and clear condemnation of such an opinion. An adverse criticism in some distant law-journal or in a text-book published years thereafter or in the opinion of some distant court has little effect. The lawyers directly involved are not allowed, by etiquette, to expose such an abuse of the judicial power; other lawyers that hope to win bad cases by similar opinions are silent; and laymen have no prompt or adequate means of showing their objection or contempt. If they express their dissent, they are usually silenced by the untrue statement, delivered with owlish solemnity, that the preservation of our liberties is dependent upon such hair-splitting decisions for the protection of the accused, Dull, perverse or hyper-technical judges, however honest, thus bring the law and the courts and the profession into contempt, making the administration of the law more difficult and crime more frequent. The result in the trial of Thaw and in the trial of the cowardly assassins who murdered Captain Rankin at Reel Foot Lake in Tennessee and the result in many other trials of late where, with unbroken success, the so-called Unwritten Law has been supported by perjury and maud-

lin appeals for sympathy have done incalculable harm. Even a judge of the United States Circuit Court has deliberately said over his signature that a jury ought to have a chance to violate its oath and to acquit a woman who has murdered a man whom she, truthfully or falsely, charges with her ruin; and yet he would probably not advocate the passage of a law imposing the death penalty upon a seducer or libertine. If that were law, the accused might at least have a chance to prove his innocence when his mouth was not closed by death. That there is gross perjury in many cases in which the Unwritten Law is invoked must be clear to any sensible man. We abolished the duel in which each man had generally an even chance for his life, but we have let it become almost impossible to convict a bullying murderer or a cowardly assassin. We have saved the guilty from the judgment of the courts, but we have saved neither the guilty nor the innocent from that blind, unreasoning, undiscriminating, bloodthirsty demon, the mob. To carry out the foolish theory that it is better to let ninety-nine criminals prey with safety upon innocent people than to punish one man unjustly accused, we have probably allowed Judge Lynch, who is unknown in Europe, to murder more innocent men in the past ten years than the courts have unjustly condemned in a hundred years. The result is that blood-guiltiness has outrageously and alarmingly increased in late years and far beyond anything known at the present time in any other civilized land. We do not want to have any innocent man convicted; and, if every case is solely decided on the merits by trial courts and appellate courts and if our governors wisely exercise their pardoning power, the possibility of the conviction and punishment of an innocent man is most remote; but the bare possibility of such a calamity should not lead us into the folly of making it almost impossible to convict the guilty.

In fact, thoughtful men have come to the conclusion that the criminal law, by reason of our absurd procedure, has broken down in this country. It is true that we convict and punish many humble offenders and, in rare instances, an influential offender; that our jails and penitentiaries are full of ignorant, lowly, evil-minded or hardened criminals; but we rarely convict a murderer or a financial pirate who has influential friends and money enough to hire shrewd, competent lawyers. In some of our States there are annually more murders than in all Europe; and, although 60 to 80 per cent of the murderers there are convicted and punished,we convict and punish less than 2

per cent. When we compare the course of the first Thaw trial which lasted three months in New York with the Crippen trial which lasted less than five days in London, we see, if we have sufficient intelligence, how far behind we are.

The delays in civil and criminal trials here are inexcusable and yet it would not be hard to avoid most of them. These delays are due to the complicated, obsolete nature of our procedure, to the deep-rooted, unreasonable conservatism of our courts and to the dilatory habits of the lawyers themselves. Delay usually suits the purpose of the defendant; the plaintiff proceeds slowly because he must proceed with caution to avoid the innumerable pit-falls that are needlessly put in his path-way. The follies which we allow in the selection o juries, especially in criminal cases, are astounding. Such absurd indulgence as we show to men accused of crime is unworthy of an enlightened people. In a late, splendid report on the Criminal Law in England made by Dean John D. Lawson and Prof. Edwin R. Keedy, it is said:

> In selecting the jury in the English Courts, the challenge of a juror is almost as rare as the challenge of a judge in the United States. . . We talked to more than one practitioner at the criminal bar who acknowledged that he had never seen a juror challenged for any reason, either by the crown of the defense.

If a juror is challenged on account of bias, two triers (laymen) are selected to hear the challenger's evidence and to decide whether the juror is biased or not. The Press is not allowed to anticipate and work up and comment on the evidence before the trial and can only publish fairly what actually takes place in court. At the close of the Crippen trial, the editor of the *London Chronicle* was fined $1000 for publishing as true a fact which was contrary to the evidence given at the trial.

The commercial classes here, as far as possible, in the past twenty-five years have abandoned the courts. In Berlin there are courts where the commercial classes can have their small cases tried quickly, cheaply and satisfactorily; and into those courts no lawyer is admitted. Here a merchant or banker will accept almost any offer of compromise rather than go into a trial. If we should adopt, as we ought, a quick and cheap method of settling out of court, by executive officers, the damage claims of laborers and mechanics injured at work and the claims of passengers and pedestrians and employees injured by public-

service corporations such as railroads and street cars, etc., we should leave half of the Bar, to say nothing of the ambulance-chasers, without employment and the jury courts of large cities would be almost deserted. Thirty years ago cases of tort, which are semi-criminal, did not constitute more than 10 per cent of the cases tried in the jury courts; now such cases have run up to 80 or 90 per cent. In these damage suits the laywers usually get from one-third to one-half of the sum recovered. In ninety criminal cases out of a hundred the defendant is guilty. In these two classes of cases especially, perjury and the suppression of testimony and the systematic dispersion of important witnesses, occur oftener than any of us want to believe. The delays and expenses of civil suits and the reversal of about forty per cent of all the cases appealed, the reversal being, in more than half the cases, on questions that in no way touch the real merits of the matter in dispute, have brought discredit upon the law and the legal profession and have made wise litigants shy of the courts. It is astonishing how easily, in a discussion of the reform of criminal trials and in actual trials, the victim of crime is overlooked. The defenders of old abuses are eager to give a helping hand to the criminal; but few of them feel the need of giving a helping hand or indemnity to his innocent victim. At a trial the latter even becomes, in most cases, the real scape-goat and is badgered and denounced as if he was the real and justly-hated culprit. If the victim has been killed, innumerable lies are told on him when he can not answer. His widow and children weep in vain. Their ears are deafened by the approving shouts of the ignorant and maudlin crowd at the acquittal of the man that wrought their ruin. To many dull, maudlin or semi-criminal persons there is a halo of heroism about a triumphant criminal, especially if he is a murderer, no matter on what ground he is acquitted; and yet it some times happens that a man easily acquitted in a criminal case is held liable in damages for his crime by another jury in an unsensational suit by the persons wronged.

The first step toward such reforms as will prevent unnecessary delays in trials and needless reversals by appellate courts for mere errors in procedure is to convince the leading lawyers and judges of the country that such changes will not prevent the attainment of substantial justice to the parties concerned and will not mar the standing of the profession or take from the learned and able lawyer the natural advantage of learning and skill. Such radical reforms in mere procedure would, however, leave untouched that more im-

portant branch of the law, the substantive law, by which our legal rights are determined, and under which, by reason of the necessary universality of the law, there must, now and then, be great hardship and apparent injustice in individual cases.

Plato ages ago pointed out the conditions that tend to make a technical lawyer a narrow person and an unprofitable citizen. He said that the active lawyer, by reason of his sharp struggles with his competitors, by subservience to the wishes of his client and to the judge before whom he appeared, generally became keen and shrewd but stunted and warped, losing his proper growth, uprightness and independence and that, though he was in fact narrow, he finally came to think himself "a master in wisdom." "In courts of law," said he, "men care literally nothing about truth, but only about conviction." Macaulay in his essay on Boswell's *Life of Johnson* expressed the same idea, saying that brilliant lawyers who excited unbounded admiration in the courts appeared at a great disadvantage in the discussion of weighty questions of government or legislation and then often talked "the language of savages or of children." Fortunately we have at the Bar and on the Bench in America to-day many lawyers of broad culture and of broad view, who are willing to lead in this reform. Roosevelt and Taft and some of the most eminent lawyers in America have given their hearty support to this movement; and yet when all the judges of California were invited to express their opinion as to the causes of delay in their courts, only thirty answered and most of them merely suggested that there were not enough judges in the State. Only three said that these delays were caused by "too great attention to technicalities and trivialities." When the judges of a State are in that condition of mind, it is not surprising that Codes and Statutes intended to eliminate useless "technicalities of practice and procedure" should be nullified by foolish interpretations or be stubbornly ignored. Prof. John H. Wigmore, in his just but scathing criticism of the narrow and inexcusable opinion of the Supreme Court of California when it reversed the conviction of Mayor Schmitt truly said:

All the rules in the world will not get us substantial justice, if the judges have not the correct, living, moral attitude toward substantial justice. . . . We do not doubt that there are hundreds of lawyers whose professional habit of mind would make them decide just that way, if they were elevated to the Bench to-morrow in place of those other anachronistic jurists who are now there. The moral is that our profession must be educated out of such vicious habits of thought.

When the Supreme Court of Missouri in the State vs. Campbell, 210 Mo. 202 reversed Campbell's conviction for rape because the indefinite article "the" was omitted from the indictment, it would have been well if the foremost lawyers of the State could have expressed their condemnation in clear terms for the honor of the State and the profession. Such a folly, which has been so universally condemned, would not have been soon repeated.

Justice delayed is often justice denied. In Magna Carta the promise was: "Nulli differemus. . . . justitiam." To one aggrieved the remedy is as important as the right. Of what value to us is the richest fruit beyond our reach or the clearest right that we can not enforce? Unavoidable uncertainties in substantive law we can endure; we can bear defeat on the merits; but it is outrageous that we should lose a clear right because of some slip by a lawyer in trying to avoid the innumerable pitfalls of an antiquated system of procedure that grew up in England when it was only half civilized and when the people needed protection from barbarous laws or from unjust prosecution at the whim of an arbitrary king or his ministers. Delays increase the costs greatly, cause the loss of important witnesses and often compel parties, especially if poor, to compromise or surrender a clear right.

The causes of delay in civil trials are manifold; but the most important may be breifly stated. Much time is lost in perfecting and completing the pleadings, which are needlessly minute and formal. The lawyer feels his way along, often in fear that some fact may be omitted with disastrous results or be stated in a form which the trial court or later the appellate court may think insufficient to make the pleading good. Months or even a year may be lost in contentions over the pleadings. Petitions and answers, etc., that formerly might have covered ten or twenty pages or more can now, under the reformed system of pleading in England, be stated in five or ten lines. What are the only substantial reasons for a pleading?

1. To inform our adversary plainly but briefly what our claim or defense is so that he may know how to meet it.

2. To enable the court to see at the threshhold whether the substantive law can recognize such a claim or defense as legal and therefore to decide at the beginning whether a trial is necessary.

All this can be made to appear by an oral statement or by a brief memorandum. If the oral statement or written memorandum, is not clear or not specific enough, the defect can be easily remedied by

a few oral or written questions to be answered before the judge. (a) Ample provisions can thus be made for protection against surprise to a party at the trial and (b) the court can have ample opportunity to see at once whether the claim or defense is such as not to deserve a trial.

The selection of the proper court for trial, the naming of the proper parties to the suit, the selection of the cardinal facts to be pleaded are all generally attended with some danger. If the plaintiff, with the approval of the trial judge, proceeds in equity and the appellate court later concludes that he should have proceeded at common law or vice versa, any victory he may win may prove barren after much time has been consumed and heavy costs incurred. The distinction between suits in equity and actions at law has been abolished in England.

In a jury trial, innumerable questions arise as to the competency of evidence and as to the court's instructions to the jury and yet juries, in fact, wisely pay scant attention to the nice points that arise in such a way; but, whatever the verdict—however just it may appear to be from the whole record—the appellate court often scans these small points of procedure with a microscope and, in about forty per cent of the cases, finds a flaw somewhere; and once more the parties, after a delay ranging from six months to two or three years, must fight the whole battle over again, though every judge on the appellate bench might admit that the winning party ought to have won and should win again. But even if the appealing party is right, he must make his motion for a new trial at the right time and on the right grounds and must get his long bill of exceptions in perfect order before the court and must take the appeal at the right time and in the right way, and must have the entire record copied at great expense, though nine-tenths of it may have nothing whatever to do with the only question that will be considered by the appellate court. If his lawyers make a slip anywhere, he will lose his right, though the appellate judges may express deep regret that they are unable to allow so just a claim or defense.

To show how far the mere machinery of the courts is raised to absurd importance, it is only necessary to say that while the American and English *Encyclopaedia of Law*—covering the entire field of substantive law defining our rights—contained 32 volumes of about 1400 pages each, the *Encyclopaedia of Pleading and Practice* published by the same corporation and intended to treat only of our remedies—

of the mere machinery of the law—covered 23 volumes of 1100 pages each. We also have an *Encyclopaedia of Evidence* in fourteen volumes of 1000 pages each. Think how absurd it is that the equity procedure of our Federal Court to-day is based upon England's technical procedure of seventy years ago and that the Supreme Court of the United States has told us in Thompson vs. Wooster, 114 U.S. 104 that the best exponent of that practice is Daniel's *Chancery Practice* issued in 1837, for which an English lawyer now has no more use than he has for the Code of the Visigoths.

Many cases are tried twice, some three times and some even oftener, not because it is uncertain who ought to win on the merits under the substantive law, not because the merits of the controversy are in doubt; but because the winning lawyer and the trial judge, in the opinion of the appellate court, made some mistake in pleading, in evidence, in instructions to the jury or in some other matter of procedure; and yet in every state using a Code of Practice, it is provided, in substance, that "a judgment shall not be reversed or modified, except for an error to the prejudice of the *substantial rights* of the party complaining thereof." That the English trial courts try cases faster than our courts and that the English appellate courts reverse fewer cases and grant new trials far less often than our courts has been shown so often by the statistics and is now so well known among well-informed men that I need not dwell upon the subject. In England at last, a new trial or reversal is not granted for any technical error in procedure—is not granted if the party that won was entitled to win on the merits; but, as said by Mr. Roscoe Pound, our appellate courts do not try the case; they only try the record; they only decide whether all the outworn subordinate rules of the game were carefully observed. The Court of Appeals in England, acting for 32,000,000 of people, grants only about twelve new trials a year. From September 24, 1909, to March 10, 1910—not six months—there were 38 cases appealed in Kentucky by defendants convicted of crime. Of these 38 cases 17 were reversed and 21 were affirmed; and of the 38 cases 16 were for homicide. Of these 16 homicide cases 6 were reversed and 10 were affirmed and in only one of the 10 was death the penalty. Some of these cases were tried twice and one was tried three times. The same story may be duplicated in almost any State of the Union.

Section 340 of the Criminal Code of Kentucky provides:

A judgment of conviction shall be reversed for any error of law appearing on the record when, upon consideration of the whole case, the Court is satisfied that the *substantial rights* of the defendant have been prejudiced thereby.

Under such a statute, here and in other states, the appellate courts generally excuse their technical reversals by falling back upon the doctrine of "presumed prejudice from every error." In other words, if there is a flaw in the indictment, in admitting or excluding evidence, in the court's instructions or in the procedure generally, the case must be reversed, if the accused is convicted; but never, of course, if he is acquitted. If he appeals, the burden is on the State to show, "beyond a reasonable doubt," that the error could not have hurt him, no matter how clear the proof of his guilt is. Not so in any other civilized land. It is said that every man accused of crime has a constitutional right to be tried by a jury; that the jury alone can pass upon his guilt; that the court has no right to say, when a technical error has been committed, that the jury would have convicted him, if the error had not been committed. Nobody can be convicted unless a jury has rendered a verdict against him; nobody wants him to be convicted without such a verdict; but it is reasonable and fair to say that, if a jury has convicted him and if the Appellate Court, after reading all the evidence, is convinced beyond doubt that he is guilty, his "substantial rights" could not have been prejudiced by a technical error in the pleading, the evidence or the instructions. At any rate he should be compelled to show that the error probably did prejudice his "substantial rights." When he thus appears guilty by the verdict of a jury and is guilty in the opinion of the Appellate Court, he ought not to be given a new trial, unless evidence of a vital character has been improperly admitted or excluded or unless the court has plainly and clearly given a misleading instruction. No quibbling over words or phrases, no mere fault-finding or strained constructions should be allowed. Wherever the Constitution of the State will not allow a verdict of a jury to be affirmed, merely because some error of procedure has been committed, although the Appellate Court believes the accused guilty beyond doubt, the Constitution should be changed. In some States such a change of the Constitution would not be necessary, if the judges were in sympathy with the right view of the matter.

I have not time to point out all the remedies that should be applied to lessen delays and to prevent technical reversals in civil and

criminal trials. No petty tinkering, here and there, with existing law will suffice. Our Codes and Statutes as to procedure should not be minute. They should give the courts more latitude in making flexible rules and in exercising a reasonable discretion. The changes must be radical as they were in England and in Germany; but some changes that would be beneficial in criminal trials and that would tend to prevent delays and technical reversals may be hurriedly mentioned as follows:

1. It should be possible to prosecute a criminal (a) by indictment and, in misdemeanors at least, (b) by information on the part of the public prosecutor with the concurrence of some magistrate or judge.

2. An indictment should be short and simple. It should briefly state the nature of the crime and only such facts as are necessary (a) to enable the accused to know what the offense is and where and when it was committed and (b) to enable the court to enter such a judgment as will prevent a second prosecution for the same offense. All of that could be stated in any case in five or ten lines.

3. The prosecutor should have the right to amend the indictment at any time, provided the whole character of the crime is not changed and the accused is given the right to a continuance, when necessary, to get new proof for his defense.

4. The rules of procedure should be held to be directory, not mandatory. In the Appellate Court, the accused should be allowed to complain only of an abuse of the trial court's discretion in passing upon such questions. Even if the trial court erred in preventing him from producing proper evidence or in admitting incompetent evidence or in giving an erroneous instruction, a new trial should not be ordered, unless the court has a reasonable doubt of his guilt or unless the trial court abused its discretion.

5. The press should be allowed to publish only a report of what actually occurs in court. It should not be allowed to exploit, in a sensational way, the anticipated evidence in cases to be tried or to publish exaggerated or biased accounts or to express opinions of a case actually on trial.

6. Jurors should not become disqualified because they have read of the crime in the newspapers or heard rumors about it or formed hasty opinion on such newspaper reports or rumors, if they can still, in the opinion of the judge, give the accused a fair and impartial hearing. The present method of allowing lawyers to spend days and weeks and months in the interrogation of jurors should be forbidden. It is

an abuse that makes a fair trial almost impossible, that eliminates the most competent jurors and that brings the courts and the law into contempt. At common law, in olden times, juries were selected from the neighborhood because they were presumed to know some of the facts at least.

7. Expert testimony should be carefully regulated; hired partisan experts should be carefully tested and scrutinized by the court; their number should be limited; and their fees regulated. They should not be allowed to have big fees or contingent fees to warp their sworn opinions.

8. Nine or ten jurors should be allowed to render a verdict. Unanimity is obtained only by a compromise of conscience in most cases. One or two corrupt or stubborn or ignorant jurors should not be allowed to prevent a verdict. The Appellate Court can protect the innocent. A majority verdict was allowed by the ancient law of Rome and is allowed now by the modern law of Germany.

9. The accused should be allowed to remain silent, but his silence ought to be a fair subject for comment. The State should have the right, in an orderly way, to compel him or any one else to produce any paper or thing that may be important in the trial.

10. Perjury should be more promptly prosecuted and punished. It is a growing evil and an awful hindrance to justice.

11. Jury service should be exacted of our best citizens; but the jurors should be treated with more consideration.

12. The State should have the same number of peremptory challenges as the accused and the number should be smaller. Either party should have a right to a change of venue when a fair trial can not be obtained in the county where the accused was first charged with the offense.

13. A transcript of the evidence of a dead, insane or unavoidably absent witness of a former trial should be competent evidence in a second trial.

When a lawyer is retained to defend an accused man his first effort is to get delay. He wants time that public sentiment against the criminal may die out; that prosecuting witnesses may be weakened or become uncertain as to the details of their testimony; that some may die and others move away; that public sympathy or pity or a a plausible theory may be worked up for the defense. When a trial is reached, every possible effort is made to get some technical error into the record on which a reversal in the appellate court may be

asked and further delay secured. As time passes, the probability of conviction and the degree of punishment become less and less. As final punishment thus becomes uncertain and as it follows long after the offense, there is no deterring effect upon other persons of criminal instincts. The most popular criminal in America seems to be a murderer. It is said that, in the United States in 1896, for each million of the population, there were 118 homicides; in Italy less than 15; in Canada less than 13; in Great Britain less than 9; in Germany less than 5.

Petty offenses in Ireland are promply disposed of in the small courts. When the higher judges, in their circuit, come to any town where there is not a single criminal case to be tried, the town-officers, with impressive formality, present the judges with a pair of white kid gloves. This ceremony is quite often carried out, even in towns of considerable size. Before we can reach that condition here radical reforms must be made in our legal procedure, in public opinion and in our religious and moral standards.

COMMISSION GOVERNMENT IN KANSAS

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In conservative quarters, where the state of Kansas has been looked upon as particularly susceptible to the attractions of political novelties parading under the name of reform, the early and wide adoption of the commission form of government for cities has doubtless caused no surprise. Any tendency which Kansas may have to become a laboratory of political experiment is not, as is often inferred, due to sheer instability of political character. It flows, rather, from that supreme faith in democracy common to the trans-Mississippi region, intensified by a lofty idealism and an intense Puritanism inherited from the men and women who emigrated there in the fifties to make Kansas a bulwark of freedom. These original traits of character have, to a remarkable degree, persisted and find political expression even at the present day. Notwithstanding all this, the State had, like so many others, fallen under the control of a political organization strongly intrenched behind a spoils system and, if current reports are true, supported by large corporations for their own good. The recent widespread revolt against such conditions reached Kansas and reacting on the Kansas character brought about a far-reaching political upheaval. The net result of the agitation was a political overturning, an awakened sense of personal responsibility on the part of the voter and a renewed interest in affairs State and municipal.

This prelude of political history is necessary to a correct understanding of the fact that Kansas has, since 1907, become the foremost exponent in point of numbers of the Galveston and Des Moines ideas. These ideas were, at the time of the upheaval and have been since, brought prominently before the people of the State through the local press, and particularly through the columns of the Kansas City *Star*. The people hastened to espouse the new idea because they saw in it a means of elevating the character and efficiency of city government.

Kansas has three classes of cities. Cities of the first class are those having a population of over 15,000; cities of the second class have over 2000 but not over 15,000 inhabitants; the third class includes all incorporated places of not over 2000 inhabitants, such as would elsewhere be denominated villages or towns. In 1907 Kansas adopted the commissoin plan by the enactment of two laws, one for cities of the first class and another for cities of the second class. In this respect, viz., the enactment of two separate commission government laws, the state is unique.

The law for cities of the first class was merely a repetition of the existing law for cities of that class, substituting for the mayor and council a board of commissioners consisting of a mayor and four commissioners elected on a general ticket every second year. The law for cities of the second class was a departure from the existing law. It adopted the main features of the Galveston plan but was loosely drawn. The commissioners, three in number, were elected one each year for a term of three years.

By the time of the assembling of the legislature in 1909 defects in the laws had become apparent and but two or three towns had adopted the plans. Interest was however aroused and new legislation was demanded for both classes of cities.

In the case of the cities of the first class action again took the form of an amendment to existing law, introducing most of the features of the Des Moines law. The board of commissioners consists as before of a mayor and four commissioners chosen biennially on a general ticket. Nominations are by non-partisan direct primaries. The board is the successor of the mayor and council and its powers are enumerated in detail. The mayor is the commissioner of the police and fire departments. The other departments, each in charge of a commissioner, are finance and revenue, water-works and street-lighting, streets and public improvements, and parks and public property. The latter includes also the health department. The officers specifically mentioned to be appointed are the attorney, clerk, treasurer, auditor, engineer, superintendent of streets, superintendent of water-works, secterary of water-works, fire-marshal, chief of police, physician, police judge, superindentent of parks and assessor. The term of all these officers expires with that of the board itself. All other officers and employees except unskilled laborers are selected on a basis of merit as determined by a civil service commission. This commission is sworn "to endeavor to secure and maintain an honest

and efficient force, free from partisan influence or control." The budget is prepared and adopted by the board of commissioners and for any expenditure of money beyond the sums voted in the budget the commissioners are liable on their bond and thereupon forfeit their office.

The recall is provided upon request of twenty-five per cent of the vote at the last election. Popular initiative of ordinances is granted on petition of ten per cent of the voters. If such proposed ordinance is not passed by the commissioners it may on petition go to the referendum. The commissioners may submit to a referendum any ordinance passed by them and all ordinances granting franchises must be so referred.

In the case of cities of the second class the law of 1907 was repealed and a new act based on the Des Moines law was substituted. Under this act the commissioners, three in number, are chosen for a term of three years, one retiring each year. All other important officers are appointed for a fixed term of two years. The mayor is commissioner of police, fire and health. One commissioner is the head of the department of finance and revenue while the other is in charge of streets and public utilities. The liability of the commissioners for expenditures in excess of appropriations is the same as in the case of cities of the first class. In addition to a referendum at the request of ten per cent of the voters on propositions initiated by petition, the people may on petition of twenty-five per cent suspend any ordinance passed by the commission until it has been submitted to a popular vote. The referendum on franchise ordinances is compulsory.

In the bill as introduced in the legislature non-partisan nominations were provided for in all cities, but the legislature restricted their use to cities of more than 10,000 inhabitants. Direct primaries are ensured by state-wide law. The recall, which was contained in the original bill, had disappeared entirely when the act emerged from the legislature. The chief argument used in debate against that section was that it might be made use of by the "wet" element to coerce a mayor who was enforcing the prohibitory law. The merit system and the civil service commission features were not incorporated in the bill as it was alleged that these would doom the whole measure to certain defeat. As originally drawn this bill also abolished the school board and placed the administration of the schools under the commission, but such an innovation was promptly eliminated by the legislature.

The acts of 1909, coming in the midst of a wide-spread civic awakening found general and immediate favor. By the spring of 1910, no less than nineteen cities had voted to adopt their provisions. These included towns ranging from Anthony with a population of 2500 to Kansas City, Kans., with 80,000. In some instances the plan was welcomed as a means of destroying a particularly unscrupulous ring; in others where political conditions were healthy, it won support by its novelty. One force working for its adoption was that idea always lurking in the popular mind that there is some time to be discovered a piece of political mechanism which when set in motion will give perfect city government without further attention from the voter than the occasional casting of a ballot.

As no city in Kansas has lived under the new plan four years and the great majority not yet one year any conclusions as to its success or failure must be quite tentative. The weight of testimony at the present time is overwhelmingly in its favor. Specific instances of reforms accomplished are freely cited. In two of the larger cities there is said to be a marked improvement in law enforcement; in another a general clearing up of the town has resulted; in still another the finances have been rescued from chaos and placed on a business basis under an approved system of accounting. One of the smaller cities furnishes a notable example of successful municipal lighting and water plants. In a state where party animosities run high, party lines are being disregarded in city affairs and in some cases it happens that a majority of the commissioners are of the minority party. On all sides the commissioners are praised for their efficiency and their direct methods.

On the other hand are assertions that non-partisan nominations are a fiction and that party slates are made and elected as before; that the boasted financial showings are misleading, and that the fixed charges of the cities are raised without a corresponding benefit. But it is safe to say that, were a vote to be taken at the present time, few if any cities would be found willing to return to the old system.

To estimate properly the worth of these or any laws for commission government it is necessary, first of all, to distinguish between the essential and the incidental features. The essentials which are substantially the same in all laws for commission government are: (1) a small body; (2) chosen on general ticket; (3) in whom there is centralization of power and responsibility. These make commission government and contain the essence of the Galveston plan. There are also

certain incidental features which are brought together and incorporated with these in the Des Moines plan. They are now so generally embodied in those laws through the country that they are, in the popular mind, identified with the system. These include non-partisan direct nominations, the initiative, the referendum, the recall, the merit system of appointment and the compulsory referendum of franchises. But it must be borne in mind that these are not a part of the commission plan itself, and that commission government and these features may and do exist independently of each other. Granted the merit of the commission plan, the comparative worth of this or that law will depend upon the presence or absence of these incidentals, and the care with which they are worked out.

In espousing the commission plan cities have, to gain efficiency, sacrificed cherished ideals such as the separation of powers, administrative decentralization and the long ballot. But if such self-denial is to be practiced and centralization of power conceded it is certainly desirable to erect other safeguards in their place. Such are non-partisan nominations, the merit system, the initiative, the referendum and the recall.

An examination of the Kansas laws shows serious defects in this respect. In cities of the first class the element of permanency is sacrificed by the renewal of the whole board every two years instead of the arrangement for partial renewal each year as in cities of the second class. No good reason is apparent why non-partisan nominations should be restricted to cities of over 10,000 inhabitants. The laws place in the hands of the boards a potent force in the power of appointment and removal, yet in cities of the second class there is no attempt to protect the employee or the public by a merit system. In both laws, moreover, the path to partisan appointment has been made easy by limiting the terms of appointed officers to two years. The referendum privilege, in cities of the first class, is curtailed at the very point where it should prove most useful: *i. e.*, the people may demand a referendum on ordinances initiated by petition, but not on those initiated by the council. The absence of the recall from the law for cities of the second class witholds a useful weapon from the hands of the people.

Some of these defects have been generally recognized and were discussed at the recent meeting of the league of Kansas cities. Steps will undoubtedly be taken to remedy them at the approaching session of the legislature. If the commission plan for cities is to

become a permanent factor in our governmental organization such obvious defects should be repaired without delay.

In arriving at any conclusions on the workings of commission government it must be remembered that it is being conducted by its enthusiastic friends. In most cases the system was adopted after a warm struggle and usually the first board of commissioners is composed of ardent advocates, personally interested in the success of their experiment. Many commissioners are to-day expending an amount of time, energy and enthusiasm upon the duties of their office far in excess of what the salary alone could command. Such a display of interest and devotion to official duty would perhaps under the old system have produced results quite as remarkable. We scarcely dare hope that this manifestation will prove permanent. The real test will come in Kansas, as elsewhere, when the initial enthusiasm shall have cooled and public interest in the novelty shall have abated; when the public vigilance shall have relaxed and the ever vigilant spoilsman shall have found the vulnerable points in its defenses. If the system stands that test, then will it have become a real contribution to the art of government. Whatever the ultimate result, the immediate effect of the movement is worth all that it has cost. It has called general attention to the problem of city government. It has aroused an interest in public affairs and a sense of civic responsibility on the part of the citizen which has too often in the past been sadly lacking.

RECENT TENDENCIES IN MUNICIPAL LEGISLATION

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The time allotted for this paper will permit only a brief statement of the tendencies manifested in recent municipal legislation. For this purpose, it may be well at the outset to state the classes of municipal legislation. In the first place, there are the constitutional provisions relating to cities which determine the general powers to be exercised by the legislatures and the cities respectively. Next in order of rank are the municipal codes and special charters passed by the legislatures and the charters framed and adopted by the cities themselves.

For the purposes of this paper, it also seems well to consider briefly the methods of formulating and enacting municipal legislation, to be followed by a consideration of the substantive changes in the organization of municipal government.

Notwithstanding the numerous constitutional provisions prohibiting or restricting special legislation, municipal government has been in the main regulated by special acts of the legislatures and is even to-day, though to a less extent than formerly, determined by special charters or acts. In many cases where general laws governing cities were required, legislation for all cities of importance was in practice, by the device of classification, applied to individual cities. This method also resulted in frequent and often arbitrary changes.

Prior to 1900, only four States had constitutional provisions authorizing cities of a specified population to frame and adopt their own charters, these States being Missouri, California, Washington and Minnesota. It is fitting that here in St. Louis, a city which has had a very fair degree of home rule under the earliest constitutional provision guaranteeing self-government in almost all purely local matters, a résumé of the progress made along this line should be given. To show that the tendency is very strong towards these home rule provisions, it is only necessary to say that as many States have incorporated these provisions in their constitutions within the past eight

years as had been incorporated in all the previous history of the country. Colorado incorporated such provisions in 1902, Oregon in 1906, Oklahoma in 1907, and Michigan in 1908. The Constitutional Convention of the Territory of Arizona has included such a provision in the constitution to be voted upon in the coming February. The most significant of these provisions is that of Michigan, since it shows that the idea of home rule is spreading eastward. Michigan is the first State east of the Mississippi to adopt such a provision and the growth of the idea indicates that it will be only a question of time until other eastern States will either adopt such provisions in their constitutions or will enact legislation along these lines.

The differences in detail to be found in the several constitutions providing for home rule charters cannot be discussed in this brief summary, but since Michigan is the first State east of the Mississippi to adopt this method of municipal legislation, it may be well to add a few words in regard to the provisions of her revised constitution. It is distinctly recognized in the Michigan constitution that city charters shall be subject to the general laws of the State, and it is made the duty of the legislature to prescribe the detailed method for the framing and adoption of charters by the electors of the several cities and villages.

The first legislature under the revised constitution passed an Act (ch. 279, 1909) prescribing the methods of framing and adopting charters as well as some of the general provisions which must be included in all charters. The restrictions placed on the cities are few and leave the cities to govern themselves as they see fit in respect to nearly all matters of local concern. The cities are thus at liberty to adopt the commission form of government or any other form so long as there is a mayor as the executive head and a body vested with legislative power. The cities with a population of 25,000 or over may own and operate transportation facilities within their limits and any city may purchase private property for any public use or purpose within the scope of its powers. Furthermore, any city or village is empowered to own and operate, within or without its corporate limits, public utilities for supplying water, light, heat or power. All cities are given the power to alter, amend or repeal any special act affecting any existing municipal department. Each city in its charter may provide for a system of civil service and for the exercise of all municipal powers in the administration of its government, whether such powers be expressly enumerated or not, and through its regularly

constituted authorities pass all laws and ordinances relating to municipal concerns, subject only to the constitution and general laws of the State.

The constitution also prescribes that the legislature shall pass no special or local act where a general act can be made applicable, and this question is made one for judicial construction; and it is further provided that no local or special act shall take effect until approved by a majority of the electors voting in the district to be affected.

The municipal code of Ohio adopted in 1902 was regarded as quite unsatisfactory, since it was a combination of the methods devised for the smaller towns and the old special charter of Cincinnati. Under the former conditions, the legislature determined for nearly every city what officers they should elect, what salaries should be paid, what streets should be opened, the tax limit, bonds to be issued, and what power each and every department of the government should exercise. In fact, the legislature had usurped completely the duties of local councils and home rule did not exist. The code of 1902 was not a great improvement on the conditions existing at the time. It was soon realized that the code of 1902 made it impossible to secure a business-like or satisfactory government. Dr. Wilcox has characterized it as "the most striking example of deliberate dissipation of responsibility to be found."

Efforts were made from time to time to amend the code of 1902 in a radical manner, but not until the spring of 1908 did success crown the efforts of those seeking to improve the municipal legislation of the State. The so-called Paine Law of 1908 is not in itself a complete code or charter but merely adds amendments to the code of 1902. By these amendments, the boards of public safety and public service are abolished and single directors substituted in their place. The appointment of these directors is placed in the hands of the mayor. Thus, for the first time the responsibility for the conduct of these two principal departments is placed on the shoulders of the mayor. He has the power to remove the directors or the heads of the sub-departments at pleasure. The director of public safety is the chief administrative authority of the fire, police, charity, correction, and building departments. The director of public service is charged with the supervision of the improvement and repair of streets and other public ways; the lighting, sprinkling and cleaning of all public places and the construction of all public improvements and public works. Upon him is also imposed the management of municipal water, lighting,

heating, sewer and garbage plants and other undertakings of the city. In addition to these, he has supervision of the baths, playgrounds, and public buildings, and he is given authority to establish such subdepartments and to determine the number of officers, engineers, etc. as may be necessary for the performance of the duties imposed upon him.

It will be observed that the departments of public safety and public service embrace nearly all the departments of the city governments. In short, the recent Ohio legislation is a modification of the so-called federal system in that it seeks to fix responsibility and produce unity in the administration of city government. The two directors and the mayor constitute the board of control, and to this board must come every contract which calls for an expenditure of more than $500 and upon it rests the duty of preparing the principal estimates of revenues and expenditures upon which the mayor must base his budget. The Paine Law centralized administrative power, simplified the governmental machinery, and made it possible to locate responsibility. The mayor has become actually, not figuratively, the responsible head of the administrative departments in the city government. It seems of sufficient importance to add that by this law, for the first time in the history of Ohio, a general merit system has been introduced into the government of its cities.

There are apparently two reasons or motives which are aiding in the extension of the principle of home rule for cities. The first one, the time required by the legislature in passing and amending special charters, is probably the most potent one; the second reason is the demand on the part of the cities and the recognition on the part of the rest of the State of the justice of the demand that the cities be given the power to act for themselves in purely local matters. The legislature of West Virginia recognized the weight of the first reason as shown by the following resolution adopted at its last session:

Whereas, A great portion of the time of the Legislature of West Virginia is occupied in considering and passing bills incorporating municipalities within said state, and making changes in charters heretofore granted, and

Whereas, The time so employed could be profitably spent in the consideration of legislation affecting the interests of the people of said state as a whole, it is hereby

Resolved by the Legislature of West Virginia: That the Governor of said state be, and he is hereby authorized and empowered, within sixty days from the date of the adjournment of the present session

of said legislature, to appoint a committee consisting of three to prepare a municipal code for the State of West Virginia, which said committee shall report the result of its work to the next regular session of the Legislature, or to the Governor, if sooner completed.

As a result of this resolution, a commission was appointed and the report recently issued by it calls particular attention to the loss of time and the great expense involved in the special legislation for cities, it being estimated that this alone costs $30,000 at each session of the legislature. The commission also calls attention to the fact that special charters are generally ill-considered and that the consideration of them impedes other important legislation. In fact, it is cited that, in self defense, the legislature passed the resolution with the view of securing a general act for the government of all the cities and towns of the State. After a thorough investigation, the commission submitted a plan embodying the following features:

1. Charters, and amendments thereto, may be procured without special acts of the legislature.
2. A wholesome amount of home rule is provided.
3. Certain general provisions are made applicable to all cities of the same class.

There is submitted with the report the draft of a general law for all cities of each class and a proposed charter which embodies many features of commission government, but each city is given power to change the charter to conform to its wishes, provided such change does not conflict with the general provisions applicable to all cities in its class. By this means each city can practically provide for its own form of government. Even the form of charter proposed does not go into small detail, but contains general provisions only, leaving the details to be provided by ordinances. If the report of the commission is accepted the cities of West Virginia will be able to provide for the commission plan of government, the initiative and referendum, civil service, non-partisan primary and elections, etc., for it is stated that the principle of home rule should permit the people of any city to govern themselves in these respects as they desire.

Although the legislation recommended by the commission, even if adopted, will not be as effective, since not so permanent, as the provisions in the Michigan constitution, it is nevertheless very noteworthy as showing the growth of the idea of home rule in the eastern States. The report also states that it has drafted the proposed legislation so as to concentrate power and fix responsibility.

The Charter Commission of New York appointed by Governor Hughes in 1907 considered what the relation between the city and State should be, as well as the question of the centralization or diffusion of the powers exercised by the city. In regard to the former, the commission had the following to say: "A virile municipality, once endowed by a proper measure of self-government, should settle for itself questions which in their relation to the State as a whole, were distinctly local." As to the second question, the commission suggested a greater degree of centralization in city government.

Another tendency to be noted has already been mentioned in connection with home rule; namely, the concentration of power and the location of responsibility. This tendency is to be observed not only in the cities under the commission form of government, but in cities which retain the legislative department as a distinct and separate branch of the city government. This is to be noted particularly in Cleveland and other Ohio cities under the "Paine Law" of 1908, Boston, the cities of Pennsylvania, and Indiana, and in the proposed legislation recommended by the Municipal Commission of West Virginia.

Another development has been the reduction in the size of legislative bodies and the tendency to abolish ward lines. In this connection, it is also well to notice the general tendency to substitute a unicameral for the bicameral council. This has been done quite recently in Boston, and in nearly every case of charter revision within the past few years, this has either been done or recommended. The Board of Freeholders of St. Louis has recommended the change from a bicameral to a unicameral system. The proposed charter for Baltimore also provides for a unicameral council. It is not necessary to call attention to the fact that the commission plan of government also provides for a small legislative body elected at large.

The growth of the idea of non-partisan primaries and elections is worthy of note. This principle has not been confined to small cities under the commission plan, but it is to be found in Boston, Spokane, and only during the past month has San Francisco been added to the list. Non-partisan elections are not to be found in all commission government cities, but the more recent of these charters provide for them, especially those modeled after the so-called Des Moines plan. In some of the cities, nominations are made by petition, as in Boston, while in others, as in Des Moines and San Francisco, they are made in non-partisan primaries. The chief feature is that there is nothing

on the ballot to indicate the source of the nomination or the party affiliation of the candidates. In San Francisco, provision is made to the effect that if any candidate at the primary receives a majority of the votes cast, he shall be declared elected, thus avoiding the necessity of any further election for that office. Preferential voting has been incorporated in the charter of Grand Junction, Colorado, and this is, I believe, the first time this principle has been adopted in any city or State in this country. Under this system, opportunity is given the voter to record his first, second and third choices. Only one election has been held under its provisions and the notices of the result have been favorable.

At present much attention is being given to what is known as the "Short Ballot" movement. There is an organization for the purpose of promoting this idea and it seems to be making rapid headway. The short ballot is secured in cities with commission government, but it is not confined to this class of cities. Under the present charter of Boston, there will ordinarily be only about five candidates to be voted for, and this is quite a contrast to the ballot to be found in a large number of cities.

The extension of the merit system has made great progress during the last few years. Mention has already been made of the provision applying to all Ohio cities, and it may be added that it is to be found in nearly all commission government cities. The new charter of Kansas City, Mo., provides for it and it is incorporated in the proposed new charter of St. Louis. The Charter Revision Commission of Baltimore included it in the proposed charter there, but the charter failed to pass the legislature. Philadelphia has had the merit system since 1906, and there has not been a case of charter revision in any large city during the past three or four years in which provision has not been made for it.

A very rapid and striking development in municipal legislation during recent years is that in regard to what is known as the commission plan of government. Starting with Galvestion in 1901, the plan has spread until to-day at least one hundred cities and towns are governed by it. Most of these have adopted it during the past two or three years, and the question is being agitated in a number of places. Memphis, Tennessee, is the largest city which has thus far adopted this plan. A campaign is at present being waged in Buffalo for it, but the outcome is uncertain.

A feature which is to be found in many of the commission plan

cities, but to be found in other cities as well, is that providing for the initiative, referendum, and recall. The progress of these ideas has also been very remarkable. Provisions for these are to be found in a number of western cities. Los Angeles has had them for a number of years, and San Francisco has just recently adopted a charter amendment containing the same features. Several cities have the initiative and referendum provisions without the recall, but the tendency now seems to be to include all three. Boston has a provision making it possible to recall the mayor at the end of two years, but has no provision for the initiative and referendum. Through these provisions, greater and more effective popular control over legislation is secured.

The question of excess condemnation by cities is receiving considerable attention, but as far as I have been able to learn, there has recently been only one piece of legislation on this subject. Baltimore, by an act of the legislature of Maryland in 1908, was given the power to condemn more land than was necessary for any parkway, boulevard, park, public building, etc., and to sell thereafter such excess, thereby enabling the city to get the increment added to the value of the land by the public improvement. Boston is now trying to secure this power, and it is likely that other cities will also eventually possess it.

Some of the other tendencies which it is not possible to discuss in this paper are the substitution of single responsible heads for boards and commissions, longer terms for officials, giving the mayor greater power in regard to the appointment and removal of officials, shortening the terms for public service franchises and giving the people greater power in the granting of such franchises.

In conclusion, the recent tendencies in municipal legislation may be summarized as follows:

1. The extension of home rule.
2. The concentration of power and the location of responsibility.
3. The extension of the merit system of appointment for subordinate positions.
4. Smaller legislative bodies and the substitution of a unicameral for the bicameral council, with either the abolition of ward lines or a widening of election districts.
5. Non-partisan nominations and elections.
6. A short ballot.
7. Commission plan of government.

8. Greater and more effective popular control over legislation through the initiative, referendum, and recall.

9. Longer terms for officials, with greater power as to appointment and removal of officials by the mayor.

10. Shorter term for public service franchises.

THE NATIONAL CENSUS BUREAU AND OUR CITIES

BY ERNST C. MEYER

U. S. Bureau of the Census

The purpose of this paper is two-fold: first, to achieve a better understanding of the methods, problems, and results of the collection of statistics of cities by the National Census Bureau; and second, to arouse if possible a keener interest among the members of this Association in the accomplishemnt of the ultimate purpose for which this work is being carried on—an interest which it is hoped may lead to active assistance on the part of individual members along the lines indicated below.

Twelve years have now elapsed since the collection of statistics of cities was first regularly undertaken by the national government. From 1898 to 1902 this work was conducted by the Bureau (at that time Department) of Labor. In 1902 this inquiry was assumed by the Census Bureau, which, as is well-known, was made a permanent body at that time.

Originally only a rather modest inquiry into city finance was made. More recently however the work has been peculiarly favored because of the well-known deep interest in municipal affairs which Dr. Durand brought to his chair as Director of the Census, and also because of a similar interest on the part of the Assistant Director, Dr. W. F. Willoughby. And so it was but natural that under the able immediate direction of Dr. LeGrand Powers this work should blossom forth into an elaborate investigation of both financial and physical statistics, the latter including employees, equipment, and other physical property. During the current year a comprehensive study is being made of physical statistics covering the following departments of city service: sewers, refuse disposal, and highways, the latter including street cleaning and sprinkling.

It may be of some convenience to know at the outset that this paper is divided into three parts covering: methods, problems, and results.

METHODS

As is well known the Census Bureau has at times been the subject of criticism both because of the form and character of data published, and because of the delay in its publication. Intelligent criticism means progress. Some of you have in this wise contributed to progress. At the same time the writer believes that a brief exposition of the methods pursued in this work may be beneficial.

The subject of methods may be considered under three heads: first, the preparation of the schedule or form of inquiries; second, the collection of the statistics by special field agents; third, the publication of the statistics.

Preparation of schedule: The art of asking for everything that is needed; and of not asking for anything that is not needed, is a difficult one. The first rough drafts of the inquiries are prepared in the office. Copies are then sent to experts in the various fields of finance and physical statistics. In some cases mooted problems are settled by correspondence; in others conferences are held in which details are thrashed through in almost painful elaboration.

Aside from the determination of the subject-matter of the inquiries and their exact wording, much time and painstaking effort is devoted to the preparation of instructions to the special field agents who are to collect the information. Practically every inquiry is carefully interpreted and directions are issued in great detail as to how unusual situation in the various cities visited are to be handled. They also contain much purely instructional matter of a general character.

Some idea of the elaborate form which these instructions assume may be gathered from the fact that the instructions on municipal finance alone represent a 135-page volume of fine print.

Collection of statistics: At the present time the Census Bureau collects practically all of its information on cities not by correspondence, but, as already indicated, through the medium of special field agents. With the improvement of accounting systems and an increased interest in this work on the part of cities, the more economical, where practicable, system of correspondence can be gradually developed.

Every new agent goes through a practical course of instruction in the central office. Economy and expedition govern in the assignment of cities to agents. During the past year 35 field agents collected statistics in the 158 cities of over 30,000 population. Most

of these men have had several years of service, and some have had no less than 10 years of experience, having grown up, so to say, with this work. The demand of politics, it must be confessed, sometimes does inject new blood which neither invigorates nor increases efficiency while on the other hand the consciousness of salubrious political support, at times, proves a powerful antitoxin to undue assiduity even in case of some veterans. That however is merely stating a trite and outworn fact of the limitations of governmental machinery.

Arrangements have been made under which a majority of the field agents spend several months of each year doing work in the central office at Washington, thus maintaining their familiarity with both ends of the work.

Publication of statistics: This includes the editing of schedules of agents; the construction of tables for the presentation of data; the tabulation of data; the interpretation of data, or preparation of the text; the printing of the completed report.

A large amount of the work of the central office has to do with the editing, or checking-up, of the schedules which field agents send in. This is done by making a close comparative study of the figures reported with those contained in the published reports, if any, of the city; and with the report of the agent for the preceding year. Wherever an explanation of discrepancies has not, as directed by instructions, been made by the agent, the specific facts are brought to his attention once more. Even correspondence with city officials may be conducted to clear up inconsistencies.

The preparations of tables for the presentation of the statistical data involves a procedure resembling that of the preparation of the schedules of inquiries. Tentative drafts of tables are made and submitted for criticism to experts in the various fields. Conferences and correspondence follow. As the work progresses from year to year and the tables assume their most practical, and therefore most permanent form this phase of the work will involve less and less time.

As soon as a sufficient number of schedules have been edited and corrected and the tabular forms have been determined the work of the tabulation of data is hurried along by specially trained clerks guided by expert tabulators.

The completed tables are next made the basis for an interpretative text discussion. Because of the unavoidable inaccuracy of some of the data collected, and the incompleteness of the records in others this task becomes a difficult one. Generalities are never of much

use, and definite conclusions are frequently rash and fearsome scientific ventures. Hence in the past the Census Bureau has probably been wise in refraining in large measure from both.

The text writing done, the scene shifts to the Government printing office which, though operating with well-known marvelous time-saving devices and machinery, is occasionally a serious accomplice in retarding the appearance of the bulletins of statistics of cities.

METHODS

Expedition in publication of the bulletins: This is a problem which has been vexing all who have been concerned with this work since its inception. The statistics of cities for 1908 are just now appearing; and even this is, the writer believes, a new record in speed. A thorough appreciation of the reasons for this delay may deaden somewhat the force of shafts directed at this apparently very vulnerable spot.

These reasons are to be found largely in the conditions which prevail in our cities; partly in the circumstances and unavoidable limitations of the work in the central office; and to a certain extent also, as already suggested, in the delay in printing.

It is difficult to portray adequately the obstacles which confront agents in the cities. Many cities publish no printed reports at all; others publish reports which are quite useless; some, and particularly New England cities, publish very valuable reports. In some cases accounts have been out of whack and balances have not balanced for years. Once helped back to an equilibrium by the field agent such cities have generally succeeded in keeping their balance. Even in large cities it not infrequently happens that a city has no record at all on important matters, particularly in the way of physical statistics.

The following extract from a letter written by the city electrician of a city of over 250,000 population in response to a call for information on street lighting will serve to set forth in concrete fashion what the Census field agents at times must face; I quote with due reverence to the grammar of the writer:

> The series street lighting is a mixture there don't anybody seem to have any real definite idea of any information at all. . . . The writer knows that there are more or less magnetite lamps and enclosed series arcs, but I do not think that there are any open arcs, etc.

To this must be added the constant confusion due to the adoption of new charters, or amendments to charters, the enactment of new state legislation, the upheaval in the city administration due to political upsets, the constant change in personel. Were it not for these far-reaching factors the annual visit of the field agent would serve to establish a personal relationship between the city and the central office; it would increase the interest of the city officials in this work, increase their ability in supplying the facts sought, and greatly accelerate the movement towards improved accounting.

The amount of time which a field agent must spend in a city, is probably far greater than the uninitiated would surmise. During the last year the following number of working days were spent in certain of our largest cities in the collection of physical statistics on sewers, refuse disposal, and highways, the latter including street sprinkling and cleaning: Philadelphia, 24; Boston, 35; St. Louis, 40; Chicago, 32, New York, 120. In the collection of financial statistics the working days put in were: Philadelphia, 105; Boston, 88; Chicago, 171; New York, 178.

The circumstances and unavoidable limitations of work in the central office also contribute to the delays. The careful editing involves an expenditure of a great deal of time. The employment of a larger editorial force would necessitate the laying-off of part of such a force during a large part of the year. The maintenance of a permanent force of experts would under such circumstances become an impossibility. Field agents, like other common mortals, do not all work with equal speed or equal ability. Their corrections of inconsistencies discovered by editors must be made in the field after they have left the particular city involved, and while carrying on their work in some other city. This occasions more delay.

The employment of a large force of field agents who might complete this part of the work in a short time meets with the same objection made to the temporary enlargement of the central office force. A corps of expert agents could not be maintained on that basis. Moreover, since the cities prefer to have but one or two agents visit them at any one time, the largest cities would set the limit within which the work could be completed at six months and more.

Gradually, however, solutions for these difficulties are found, and with them the speed of publication will be constantly accelerated. It is well to bear in mind that the investigation of city statistics has been constantly and rapidly growing, overwhelming those in charge with

new problems, and yet in spite of its newness it is rich in germs of incipient success. The improvement of the unhappy conditions prevailing in our cities is paramount, And incidentally it might be remarked that when once these conditions have approximated an ideal, one of the main reasons for the prosecution of this splendid work on the part of the Census Bureau will have been removed.

Uniform forms of inquiries, or schedules, for all statistical bodies, city, state, and national, as well as for all private organizations collecting city statistics. This is another vital problem the solution of which will contribute immensely towards the goal of improved city accounting. It will remain acute particularly during the next few years, because of the rapid extension of the field of inquiry into municipal statistics. Well begun is half done, applies with great force here. State statistical bureaus are gradually differentiating from their general work so-called municipal divisions, a movement in which Massachusetts leads. These municipal divisions send out inquiries calling for statistics to all the cities of the state, in much the same way that the national division of statistics of cities is collecting information. It seems imperative that every effort should be made where such an investigation is inaugurated by any state bureau to follow the same general form or scheme of inquiry which is used by the national Census Bureau, with only such modifications as the state law or peculiar local conditions demand. Differences of opinion are bound to arise as to both scope and form of inquiry. The Census Bureau fully realizes that it does not possess a monopoly of practical ideas upon this subject. It has consistently invited intelligent criticism and frank suggestion. But it is equally insistent in its appeals for coöperation and conferences in order that divergent views may be harmonized and a useless waste of effort and energy in a many-cornered tug-of-war be avoided. Only recently the writer received a letter from the chief clerk of an important department of city service in one of our leading states in which that official expressed his regret that he could not keep his books in such a way as to supply more readily the information called for by the national Census Bureau and added that he had only recently changed his system of bookkeeping to conform to the demands for information on the part of the state statistical bureau. The chances are that in this case the state bureau is not entirely right and the national bureau is not entirely wrong. There is urgent need that the two bodies get together. Both have the same common aim. A jerky span accomplishes far less than does a steady team.

It is far more simple to begin such work right when first it is organized in the states, than to remodel the plan after its introduction. Should occasion offer, the writer sincerely hopes that members of this Association will advocate the advisability of a conference with the national Census Bureau before legislation is enacted or a state municipal division is launched in some other way.

It seems not improbable, even admitting certain existing constitutional difficulties, that with the progress of things, the national Bureau may find it expedient to collect its information through the medium of the state bureaus, thus affecting both a considerable economy and preventing a great duplication of effort.

What has been said of the necessity of coöperation and the adjustment of conflicting views on the part of state and national municipal divisions, applies with equal force to the municipal improvement societies, the civil engineering societies. and the many other organizations interested in one phase or another of civic improvement. Reacting under the growing pressure for facts and figures on the part of their members, these organizations are circulating among city officials a rapidly increasing number of schedules or forms calling for certain statistical information. Until the idea of coöperation and conference and uniformity of procedure has percolated through in every direction, and it will probably require a rather extensive and strenuous cultivation of the soil to accomplish this, we may expect to find any collection of cards, schedules, and forms, as to-day in circulation, to represent a unique piece of scientific mosaic which does full justice to the reputed versatility of the American citizen.

City officials naturally chafe under such a bombardment of promiscuous interrogation. They cannot be expected to see the point of an argument in favor of uniformity of accounting when intelligent men in the same breath appeal to them for statistics under guises whose number is limited only by the number of appeals.

Uniform day for closing of city books: At present the fiscal years of cities close during every month of the year. An attempt to introduce arbitrarily uniformity in fiscal years must necessarily fail because of the fact, as is well-known, that the fiscal year of a city is generally most intimately related to both the financial machinery of city and state as well as to administration in general. While eminently desirable an improvement in this direction is apt to come about only in the very slow process of governmental evolution. But while we wait for the rather slow chariot of progress, the vital thing sought

can be accomplished in another way. Any progressive accounting and bookkeeping system makes provision for, or permits with great facility of, the closing of the books at the end of every month. But all that is needed in this particular case is that the cities of this country adopt a uniform policy to close their books on one and the same day, irrespective of their fiscal years. To set the wheels agoing in this direction obviously is no mean task. But it can be done.

Development of units of efficiency: It may be said that the real vintage of all effort in the collection of statistics of cities is the development of units of efficiency with which to measure the efficiency of city government in individual cases, and thus enable the public to gauge administrative service quite as effectively as we can with the use of the Babcock test tell whether milk is milk or is something else.

Efficiency, as we know, is expressed by two elements: cost and service. Either one without the other is wholly inadequate as a measure of effciency. Generally speaking, units of cost are developed from financial statistics; while standards of service are developed from physical statistics. Through the correlation then of the figures of cost and the figures of service we obtain what may be called units of efficiency.

Originally the Census Bureau collected financial statistics only and contented itself with the development of as tolerably accurate units of cost as the circumstances permitted. It undertook also, some years ago, the collection of physical statistics, and the bulletins of 1905 and 1907 took the first rather uncertain steps in the direction of the development of units of efficiency. It was well known at the time of the appearance of these bulletins that many of the statistics were prima facie inaccurate as measures of efficiency, and did not permit of an intelligent and safe comparison of cities with each other. They were published however in order to arouse discussion, to set men to thinking, to prepare the way for a more extensive and more intensive study. The bulletin of 1909 hopes to carry this work one step further.

This is probably the largest and most vital problem which this division of the Census Bureau has to solve. The fundamental difficulty lies with the incompleteness and inaccuracy of city accounting systems which today do not yield precise records of costs or of quality of service, upon which to calculate units of efficiency. These records must possess great detail, as is evident from the following illustration, which at the same time may serve to demonstrate the practical evolution

of a unit of efficiency in street cleaning through the correlation of financial and physical statistics; that is the combined interpretation of the cost of street cleaning and the character and extent of the cleaning done.

In the Census Bulletin of 1907 we find that the average cost per capita of street cleaning for all cities of from 30,000 to 50,000 population is 32 cents, whereas the average cost per capita in case of all cities of over 300,000 is no less than 95 cents, practically three times as high. Now we all know that whatever the shortcomings of the street cleaning departments of our great cities their efficiency is certainly more than one-third that of the smaller cities. In the development of a unit of efficiency, therefore, we find that the mere cost of a function is not a safe measure.

But the Census Bureau also collected certain physical statistics on street cleaning and determined the area in square yards of all streets of a city subject to regular cleaning. In the search for a measure of efficiency these two elements of cost of cleaning and of total area of streets subject to cleaning were combined. It was found that in case of the smaller group of cities the cost per 1000 square yards of streets regularly cleaned was $39 whereas that for the largest cities was $112. Again we must conclude that this measure of efficiency is not a correct one. And if we pause a moment, it will occur to us that undoubtedly our large cities are compelled to clean a given area far more frequently than are our smaller cities, hence the cost per 1000 square yards subject to cleaning must of necessity be greater.

The Census Bureau enables us to carry our search for a measure or unit of efficiency a step further. Acting on the suggestion just made we conclude that we shall arrive at a far more accurate measure if we can figure the cost on the basis of the gross area of cleaning done; that is if the large cities clean 1000 square yards of streets 300 times in a year we figure the cost on the basis of 300,000 square yards of cleaning done; and if the smaller cities clean 1000 square yards but 100 times we figure the cost on the basis of 100,000 square yards of cleaning done.

It was found by the Census on this basis that the cost of street cleaning in the smaller group of cities was $345 per 1,000,000 square yards cleaned; whereas that of the larger group was $589 per 1,000,000 square yards cleaned. Here then we notice distinct progress towards a correct measure of efficiency; but the difference in cost is still un-

reasonable, and we must conclude that the physical statistics of area cleaned do not present a complete picture of the standard or grade of street cleaning service performed. This latter fact is brought out even more forcibly when the cost per 1,000,000 square yards of streets cleaned in case of the largest cities is compared. We find that it cost Philadelphia but $239 whereas it cost St. Louis, though next in size, no less than $916; while it cost New York $784, and Chicago $686.

There are obviously other elements which enter into the character of street cleaning service rendered than mere gross area of streets cleaned. There is the important factor of the method of cleaning, whether by hand, by machine, or by flushing, or by a combination of all three or two of these methods, and the extent to which each is employed. These facts must be known in order that a correct guage of the service performed may be obtained. But we now get to the point where the city records begin to crack and collapse. Probably but few field agents have been able to obtain accurate data on these services during the past year. Almost all of them have however obtained data of some kind, an estimate or an assurance based on rudimentary records.

Aside from this data information must also be had on the area of the various kinds of paving subject to each form of cleaning, as this factor affects both the cost and the character of service. There is probably no city in the country which keeps an accurate record of such physical statistics.

On the cost side the matter of equipment, and of the number, classes salaries, and wages of employees engaged in this work are important. Accurate physical statistics of this character can be obtained in but a few cities.

The above illustration ought to demonstrate the necessity of a further improvement of city accounting before great progress towards the evolution of correct measures or units of efficiency can be made. It ought also to demonstrate that the improvement of the records of physical statistics is equally as urgent as is that of financial statistics. This statement should be emphasized, underscored, italicized. Reform has heretofore had its eye almost entirely upon the financial records; yet the illustration given plainly demonstrates the futility of efforts to compare city services on the sole basis of cost. Comparative studies are however the primary purpose of the statistics collected. The improvement of the records of physical statistics

therefore becomes paramount. Without these statistics, mere cost comparison is a one-legged affair, hard to keep up and easy to get away from.

RESULTS

The writer keenly realizes that he has consumed too much time in discussing some of the problems which make life interesting in this division of the Census. He will therefore take a short cut home in speaking of the concrete results already attained in this work. An imposing story could be told of the beneficient influence of the Census work upon the cause of accounting in Ohio, Indiana, Massacuhsetts, and other states; of the achievements of the two conferences on uniform city accounting held in Washington in 1903 and 1906 at the instance of the Census Bureau, and under the leadership of Dr. Powers; of the numerous addresses and papers which have been presented by officials of the Census Bureau in creating sentiment and enlarging popular interest in the subject of improved accounting; of the many valuable records prepared for cities by field agents; of the annual missionary work done by some of these living pillars of the cause, and, as in other fields of human endeavor, of the backsliders, and the obdurate. This would be a long, but on the whole an encouraging story.

Indirectly also this work has left its mark, though in forms not so easily measurable. The bulletins, though they may fairly claim distant kinship with historical literature, are storehouses of information. Governmental policy demands that they be free from specific critical comment. As a result they present a far more modest and harmless appearance than there contents might provide. And their full utility is apt not to be discovered with out a considerable interpretative study of the data presented.

Summarizing briefly the most vital points aimed at, it would seem that such interest in this subject as you may have, may with profit be directed towards the advancement of the following policies: first, close and harmonious coöperation between city, state and national statistical bodies dealing with municipal statistics, and private organizations interested in civic problems, looking towards the adoption of uniform methods of statistical inquiry, within the limits set by state laws and special conditions; second, the closing of the city accounts and records on one and the same day everywhere, and irrespective of the closing of the fiscal year; third, improvement not only of the recording of financial, but of physical statistics. The

progress and vital results of the work of the Census Bureau will depend largely upon the speed and success with which the significance of these factors is generally recognized, and the effectiveness with which the ideas which they represent are translated into practical achievement. To this task your coöperative interest is invited.

THE DIRECT PRIMARY IN ILLINOIS

BY WALTER CLYDE JONES

Member of State Senate of Illinois

Illinois has had an arduous task in its efforts to enact a valid direct primary law. Unusual conditions exist in Illinois which have made the problem peculiarly difficult.

SPECIAL CONDITIONS IN ILLINOIS

In the first place, Illinois contains at one corner a large city having more than one-third the total population of the state. The political conditions and methods of party organization in Chicago are wholly different from those of the smaller cities and communities of the state. What is suitable for the country districts in the form of a primary law is in many respects unsuited to the metropolitan conditions of Chicago, and *vice versa*. The country districts, to a great extent, were at the beginning of the movement for direct primaries favorable to a primary which was direct, as distinguished from a delegate-convention system, and were favorable to such a primary of the plurality type, in which a plurality of the votes, not necessarily a majority, should nominate. In Chicago, those active in politics and familiar with party organization were opposed to direct primaries, and particularly antagonistic to a direct primary of the plurality type. They favored a delegate-convention primary system, and in any event believed that a direct primary, if inevitable, should provide for majority nominations.

There was thus a distinct cleavage between the city of Chicago and what we may term the country districts, and this attitude was reflected not only in the party leaders of the respective communities but in the members of the legislature as well.

Another special condition giving rise to difficulties was the principle of minority representation which prevails in Illinois and which is found in no other state in the Union. This system of minority

representation provides for a cumulative vote for members of the House of Representatives of the General Assembly, and this principle of minority representation, with its cumulative voting plan, has presented problems in connection with the drafting of a direct primary law which, in view of the attitude of our Supreme Court, have seemed almost insuperable.

Immediately following the Civil War the northern half of Illinois which had been abolitionist in sentiment, was solidly Republican and the southern half, which had been pro-slavery in sentiment, was solidly Democratic. In consequence, the Democrats of the northern half of the state and the Republicans of the southern half of the state were without representation in the legislature. It was proposed to remedy this condition by the principle of minority representation, which was written into the Constitution of 1870. In accordance with this plan, the state is divided into fifty-one senatorial districts, from each of which one Senator and three Representatives are elected. The senatorial district is not subdivided into three representative districts, but the three Representatives are elected at large from the entire senatorial district.

In voting for Representatives the elector may mark his ballot so as to cast one vote for each of three candidates, or one and one-half votes for each of two, or three votes for one. Casting three votes for one candidate is called, in the vernacular of Illinois politics, "plumping" the votes. The ballot at the final election contains the names of all the candidates of the various parties and in front of each name is a square. If a cross be marked in the square opposite one name, three votes are to be counted for that candidate; if crosses are marked in the squares in front of two names, one and one-half votes are to be counted for each of the two candidates; if crosses are marked in the squares in front of three names, one vote is to be counted for each of the three candidates.

In practice, the majority party in a senatorial district will usually nominate two candidates and the minority part will nominate one candidate. The electors of the minority party by "plumping" their votes for the one minority candidate, are practically sure of electing him. The electors of the majority party, by casting one and one-half votes for each of the two majority party candidates, are practically certain of electing both. A district would have to show an overwhelming majority in favor of one party to warrant the nomination of three candidates by the majority party. In exceptional

cases, where a district is very evenly divided and may swing in either direction, each of the two major parties would be justified in nominating two candidates; but districts where such conditions prevail are exceptional. Inasmuch as three Representatives are to be elected from each district, the two candidates nominated by the majority party and the one candidate nominated by the minority party are practically sure of election. The final election thereby becomes perfunctory. The nomination is equal to an election. This is one of the defects of this minority system and is a potent cause of bad government.

This principle of minority representation seems to have solved the problem for which it was devised. For many years past there have been Democratic districts in the northern half of the state and Republican districts in the southern half of the state. This minority system has outlived its original usefulness and remains in our political system, like the vermiform appendix of the human body, a cause of disturbance and disorder.

The Supreme Court of Illinois has held that a primary election is an election, as that term is used in the Constitution, and must therefore conform to the provisions of the Constitution respecting elections. Inasmuch as the Constitution provides that the cumulative plan of voting must be provided in the election of Representatives for the General Assembly, the Supreme Court, by an extension of its logic has ruled that a primary election must likewise provide for cumulative voting. On the face of it cumulative voting at a primary election is absurd, and in practical operation the results produced are disastrous to good government. Inasmuch, however, as the Constitution and the Supreme Court are inexorable on this point, cumulative voting must be provided in our direct primary laws, unless the people shall amend the Constitution to eliminate the principle of minority representation or the cumulative voting feature.

The Illinois legislature has to date enacted four direct primary laws: Law No. 1 was enacted in the regular session of 1905; law No. 2 was enacted at the special session of 1906, called for that sole purpose; law No. 3 was enacted at the adjourned session of 1907–8 following a recess at the conclusion of the regular session of 1907; law No. 4 was enacted at the special session of 1910 called for that and other purposes.

Laws No. 1, 2 and 3 have been declared invalid by the Supreme Court on the ground that they violated provisions of the Constitu-

tion. Law No. 4 has yet to be fully tested by the courts, although the Supreme Court in October last refused to nullify the provisions of law No. 4, which authorize the senatorial committee to determine the number of candidates for Representative which the political party shall nominate.

Law No. 1. This was a dual instrument. In effect there were two acts in one. The first 64 sections of the act provided a system of primaries for counties under 125,000 inhabitants, while the remaining sections provided a different system of primaries for counties having more than that population. Cook County was the only county falling in the latter class. County central committees outside of Cook County were given authority to determine whether the county officers should be nominated by delegates in convention or by a direct popular vote, and, if the latter, whether by majority or plurality vote. In Cook County the county officers were nominated by convention. In Cook County a popular vote was provided for mayoralty and aldermanic candidates.

The candidate for Governor, and congressional and legislative candidates were given a popular vote. The popular vote thus applied to a few only of the officers to be nominated, and the vote constituted merely an instruction to the delegates. In counties outside of Cook the candidate receiving the highest vote in the county had the delegates from the whole county instructed to vote for him in the nominating convention. A majority of the delegates was necessary to nominate. The majority of the delegates from each county had the power to release the instruction after the first ballot. In Cook County, the election precincts were grouped into delegate districts consisting of from two to seven precincts, according to population. The candidate for the office of Governor and for congressional, legislative and municipal offices, receiving the highest number of votes in the delegate district had the delegates from that district instructed for him in the convention. A majority of the delegates was necessary to nominate. The majority of the delegates of the district had the power to release the instruction after the first ballot. An advisory vote on United States Senator was provided.

The dual character of the law represented a conflict and a compromise between the divergent views of Chicago and the country districts, the former leaning toward the direct primary and the latter clinging to the delegate system. Cook County was insured convention nomination of its numerous county officers, while the outside counties

were afforded a means whereby they could secure a direct nomination of county officers, if they so desired. A popular vote throughout the state was provided for the office of Governor but not for other state offices, and for members of Congress and the General Assembly.

This law was held unconstitutional by the Supreme Court,[1] principally on the ground that it was unequal in its application that an election law, in view of the Constitution, must apply equally and uniformly throughout the state, and that the same law on this subject applicable to Cook county should be applicable to the rest of the state, and *vice versa*. The law was held void on a number of other grounds as well. This law was declared unconstitutional while the primary campaign in the spring of 1906 was in progress.

Law No. 2. The Governor immediately called a special session and law No. 2 was enacted. The primary election which ordinarily is held in April, was postponed to the following August. The statewide primary election of 1906 was held under this law, and before the law could be attacked in the courts the final election was held in November, 1906, and the officers thus elected were duly installed in office.

Then followed the regular session of 1907, during which the Supreme Court held its decision upon primary law No. 2 in abeyance. In the fall of 1907 the Supreme Court rendered a decision[2] holding law No. 2 invalid because of the violation of constitutional provisions. Law No. 2 was similar to law No. 1 except that it applied uniformly throughout the state. Provision was made for subdividing the state into delegate districts each consisting of a number of precincts. A popular vote was provided as to state, congressional and legislative officers. Candidates were required to file a petition signed by a specified number of electors. The names of candidates to be voted upon were printed on a so-called "official ballot." The names of delegates were printed upon a separate unofficial ballot called the "delegate ballot." The delegates from each delegate district were instructed to vote on the first ballot for the candidate receiving the highest number of votes in the district. A majority of the delegates was necessary to nominate. If no nomination occurred on the first ballot, the instructions were by law released and the delegates were free to select the candidate. An advisory vote was provided for the office of United States Senator and for certain other offices.

[1] *People* v. *Election Commissioners*, 221 Illinois Reports, page 9.
[2] *Rouse* v. *Thompson*, 228 Illinois Reports, page 522.

One of the principal grounds for holding law No. 2 unconstitutional related to the subject-matter of minority representation. The law provided that the delegates to the senatorial convention should be instructed upon the first ballot to vote for the candidate for Representative receiving the highest popular vote at the primary. One candidate was thus entitled to nomination by popular vote, if his plurality was sufficiently large and properly distributed so that he received the instructed votes of a majority of the delegates to the senatorial convention. If he failed to receive a majority, then the instructions were discharged and the delegates were free to make the selection. The popular vote thus applied to but *one* of the three candidates for Representative, to-wit, the candidate receiving the highest number of votes. The remaining candidates of the party for Representative were to be nominated by the delegates to the senatorial convention. The delegates were to decide how many candidates the party should nominate and should make the additional nominations, if any. If, for instance, the party were the majority party which had decided to nominate two candidates, then the one additional Representatives was to be selected by the delegates. If the minority party presented but one candidate, this candidate would be the one receiving the highest popular vote, provided the delegates thus instructed constituted a majority of the convention; if not, the selection would be made by the delegates.

The Supreme Court held that this provision was unconstitutional because it discriminated between the several candidates for Repsentative, giving one an opportunity to win by securing the highest popular vote, while the other candidates were required to submit to the decision of the delegates of the convention. There were other defects pointed out in the law which were of minor consequence.

At the termination of the regular session in May, 1907, a recess was taken until the following October for the purpose of giving consideration to legislation having to do with the proposed Lakes-to-the-Gulf deep waterway. While this adjourned session was in progress the decision of the Supreme Court invalidating law No. 2 was rendered, and the legislature thereupon undertook the task of enacting a third direct primary law.

Law No. 3. The decisions of the Supreme Court had indicated the futility of attempting to devise a satisfactory law based upon the retention of delegates and conventions. Accordingly, a bold move in advance was taken by the legislature, after several months of con-

troversy, and in January, 1908, a state-wide plurality, direct primary law was enacted covering all state, congressional, legislative, county, judicial and municipal offices. An advisory vote on United States Senator was included. University trustees were excluded because women have a right to vote for these offices, thus placing these offices in a class by themselves. Presidential electors and national delegates were omitted from the law. A state convention was provided to select electors and national delegates, to nominate Univeristy trustees and to adopt a platform. The delegates to the state convention were selected by the precinct committeemen of the respective counties, and these precinct committeemen were elected at the primary.

The Constitution of Illinois provides that all laws enacted by the General Assembly shall become effective on the first day of the following July, unless an emergency clause be attached, in which case the bill must receive a two-thirds vote of each house. The margin in favor of the enactment of the direct primary law was so small that the two-thirds vote necessary for the inclusion of an emergency clause was impracticable. In order to meet the situation and provide for the primary election of 1908, the primary election was fixed for the following August, a little more than a month after July 1st, when the law would become effective. A provision was inserted in the law to the effect that the county clerks and election commissioners—whose duty it is to make up the ballots for the final election in November—should not print upon the ballots for the final election the names of any candidates unless they should be duly nominated in accordance with the newly enacted primary law. In this manner, any attempt to hold rump conventions and make nominations prior to the going into effect of the new law was anticipated and prevented.

The state-wide primary election of 1908 was held under this law, and before an attack could be made thereon in the courts the final election was held in November, 1908, and the officers elected thereat duly installed. Thereafter the regular session of 1909 was held during the months from January to June. During this period the Supreme Court held in abeyance its decision with respect to the validity of law No. 3.

It was during this session that the deadlock arose respecting the election of a United States Senator. Law No. 3 provided for an advisory vote upon United States Senator. The law was silent as to whether the advisory vote should be construed as an instruction by senatorial districts or a state-wide instruction. There were three

principal Republican candidates for United States Senator who submitted their candidacies to the people at the primary election in August, 1908—Senator Hopkins, Congressman Foss and ex-Senator Mason. Hopkins received a plurality, but not a majority, of the votes in the entire state, although he lost his senatorial district.[3] Hopkins carried a majority of the senatorial districts in the state. Foss and Mason each carried a number of senatorial districts.

Immediately upon the convening of the legislature the question arose as to the proper effect which should be given to the advisory vote. The Hopkins adherents contended that inasmuch as Hopkins had received a plurality of the popular vote in the state at large he was entitled to the nomination. The Foss and Mason adherents contended that the law properly contemplated that the vote of the senatorial district should constitute the instruction, and that the members of the legislature were instructed to vote for the candidate receiving the plurality of the votes in their respective senatorial districts.

In view of this conflict of opinion, a number of the Republican members of the legislature—particularly those whose districts had instructed for Foss and Mason, and some members who personally were antagonistic to Hopkins and who were unwilling to recognize the binding effect of the advisory vote in any particular—refused to enter the Republican caucus on United States Senator. The result was that no caucus nominee was possible.

The Democratic members of the legislature voted in joint session for Mr. Stringer, the Democratic candidate who had received the plurality of the vote of the state, while the Republican members, who were in the majority in the legislature, divided between Hopkins, Foss and Mason. A deadlock was thus established which persisted throughout the session. There was some swaying of votes back and forth between these candidates, and there were complimentary votes for various outside candidates, but no one of these candidates was able to secure a majority of the votes necessary to elect. Toward the end of the session William Lorimer, whose candidacy had not been submitted to the people at the primary election, was elected by a by-partisan union of fifty-three Democrats and fifty-five Republicans. Thus ended the deadlock which had continued throughout the session.

[3]Total vote: Hopkins, 168,385 Foss, 121,110; Mason, 86,596. Senatorial districts carried: Hopkins, 33; Foss, 16; Mason, 2.

Charges of corruption and bribery in the election of Senator Lorimer have been made and these charges have been the subject of investigation by the United States and by the courts.

After the adjournment of the regular session in 1909 the Supreme Court held law No. 3 invalid.[4] There were two principal grounds in view of which the law was held invalid: The first related to the provision concerning registration; the law provided means whereby electors who had moved subsequent to registration might swear in their votes, but failed to make provision whereby an elector who had become of age subsequent to the last registration day might swear in his vote. There were several other instances in which electors might be entitled to vote, by virtue of naturalization, etc., which were not provided for by the law. On this ground the law was held unconstitutional.

The second ground was that the law failed to provide for cumulating the votes for Representatives in the General Assembly. The court held that inasmuch as a primary election was, in the opinion of the court, an election, as that term is used in the Constitution, and inasmuch as the Constitution provides that at all elections provision must be made for cumulating the votes in voting for Representatives in the General Assembly, the law was void in that it made no provision for such cumulative voting.

Law No. 3 provided that the senatorial committee, the members of which were elected at the primary, should determine for the party how many candidates for the lower house the party should nominate. The senatorial committee of the majority party in practice usually decided that two should be nominated, and the committee of the minority party usually decided that one should be nominated. The elector was entitled under law No. 3 to cast one vote for each candidate for the lower house. If, for instance, he were an elector of the majority party which had decided to nominate two candidates, he could cast one vote for each of two candidates; if an elector of the minority party, which had decided to nominate but one candidate, he could cast one vote for any one candidate of the minority party. Cumulative voting at the primary election was not permitted.

It was considered by the legislature, after mature deliberation, that there was no propriety in providing cumulative voting at the primary election, because the primary election was a contest within the party;

[4] *People* v. *Strassheim*, 240 Illinois Reports, page 279.

it was not a contest between parties, as at the final election. Cumulative voting, therefore, which is an aid to minority representation, seemed not only foreign to the nature of a primary election, but absurd and meaningless in such a connection. Accordingly, the legislature, in its wisdom, made no provision for cumulative voting for members of the lower house. The Supreme Court held that law No. 3 was invalid because it failed to provide for such cumulative voting.

Law No. 4. In the special session of 1910 law No. 4 was enacted. This law is similar to law No. 3, except that a cumulative vote is provided for Representatives in the General Assembly, and the provision as to registration was amended to meet the requirements of the Supreme Court. Inasmuch as a two-thirds vote necessary to include an emergency clause could not be obtained, provision was make, as in law No. 3, for the holding of the primaries after July 1, 1910, when the law would in natural course go into effect. The primary elections, which ordinarily would have been held in the spring of 1910 were thus postponed until September 15, 1910. The state-wide primary elections were held at this date, and thereafter the final election was held in November 1910.

In view of the difficulty of enacting a primary law which would satisfy the conflicting statements of the Supreme Court in its several decisions relating to the subject of minority representation, it was deemed advisable by the legislature to subdivide the direct primary law and enact it in two separate measures, one to relate to all offices except legislative offices and the other to relate exclusively to the legislative offices. Accordingly, two laws were enacted, one relating to the offices in general and the other confined to the nomination of members of the Senate and the House of the General Assembly and the election of senatorial committeemen.

Subsequent to the primary election and prior to the final election of 1910 court proceedings were instituted before the Supreme Court to test the validity of the law relating to legislative candidates in view of the provision therein authorizing the senatorial committee to fix and determine the number of candidates for the lower house to be nominated by the party.

The legislature, in enacting the law, was confronted with the difficulty of arranging for the determination as to the number of candidates which a political party should nominate. Two alternative plans presented themselves, (1) the senatorial committee, the members of which were elective under the primary law, could be given the power

to suggest or determine the number of candidates for the lower house to be nominated by the political party, whether one, two or three; or (2) the matter could be submitted to the voters at the primary election and the voters could decide, by proper marking of the ballot, whether the party with which they were affiliated should nominate either one, two or three candidates for the lower house.

The practical objections to the latter plans seemed so serious that, after mature deliberation, the first plan was adopted. The law as enacted provides that the senatorial committee shall fix and determine by resolution the number of candidates which its party should nominate and this resolution shall be duly certified to the proper official who makes up the primary ballot. This official shall thereupon print upon the ballot the decision of the senatorial committee, so that the voter may know in marking his ballot the number of candidates which the senatorial committee of his party has decided should be nominated.

The Supreme Court in a former decision,[5] had held that the determination of the number of candidates the party should nominate was a political and not a legislative matter. In consequence, it seemed that the delegation of such a power to the senatorial committee, which was a legally elected body, should not be objectionable from a constitutional standpoint.

The alternative plan of allowing the voters to determine the number of candidates seemed seriously objectionable from a practical standpoint. Inasmuch as the voter would be required to mark his ballot to express his views as to the number to be nominated at the same election at which he was required to mark his ballot for the nomnation of candidates for the lower house, the elector could not know when he marked his ballot how many candidates were to be nominated. It could not be known until the ballots were counted whether a majority of the electors of the party favored the nomination of one, two, or three. It is manifest that an elector would naturally mark his ballot very differently if but one candidate were to be nominated from the manner in which he would mark it if two candidates, or three, were to be nominated. Such a plan would require the elector to mark his ballot blindly, without knowing what policy as to the number of candidates to be nominated would be adopted by the voters.

There were these two alternatives presented, and it was believed

[5] *Rouse* v. *Thompson supra.*

by capable lawyers in the legislature that either was constitutional, although there were reasons urged against the constitutionality of both these provisions. A majority of the legislature finally decided that it was safer and more practicable to adopt the plan of permitting the senatorial committee to make the decision or suggestion as to the number of candidates to be nominated, particularly in view of the express statement of the Supreme Court in the Rouse case that this was a political and not a legislative function.

It was urged upon the Supreme Court in the proceedings which were instituted after the primary election and prior to the final election of 1910, first, that the separate primary law relating to the members of the legislature was invalid as a whole; and second, that the provision authorizing the senatorial committee to make the determination or suggestion was void and should be disregarded without invalidating the entire law. If this latter theory were adopted by the court, then each party would be held at the primary election to have nominated three candidates, if there were that many candidates upon the ballot, who had received votes. The Supreme Court, without rendering a written opinion, dismissed the petitions, thus permitting the action of the senatorial committees to stand. The petitions filed by defeated candidates sought writs of mandamus to compel the officials to print on the ballot the names of the three candidates receiving the highest number of votes at the primary. The final election was thereafter held and most of the officers elected at the final election was have thus far been installed in office.

Since the election the Supreme Court has handed down its written opinion.[6] Four of the seven judges hold the law constitutional but disagree as to their reasons for so doing. One of these holds that the law authorizes the senatorial committee to actually decide as to the number of candidates for the lower house to be nominated, that this is a political and not a legislative function and therefore properly delegated by the legislature. Three of the majority hold that the law is valid, because when properly construed it merely authorizes the senatorial committee to suggest, not fix, the number to be nominated, and that therefore three will be nominated if there are that many on the ballot. The three judges constituting the minority hold that the law delegates to the committee the power to actually fix, not merely suggest, the number of candidates, that this is a legis-

[6] *People ex rel. Espey* v. *Deneen* (December, 1910).

lative, not a political function, and that, therefore, the law is void. All of which leads the advocates of direct primary reform to throw up their hands in dismay and to look to a constitutional amendment eliminating cumulative voting as the only relief from an intolerable condition.

Thus it will be noted that notwithstanding the fact that the Supreme Court has successively declared three of the four direct primary laws invalid for constitutional reasons, the state-wide biennial primaries in the years 1906, 1908 and 1910 have, by the persistency of the direct primary advocates in the legislature, been duly held under direct primary laws. Illinois has thus had the benefit of direct primaries in its elections for the past four years.

A brief reference to several features of the Illinois law, the practical operation thereunder, and some proposed amendments which have been urged, may be of interest.

UNITED STATES SENATORS

The present law provides for an advisory vote with respect to candidates for United States Senator and specifies that the vote of the state at large and not the vote of senatorial districts shall be considered in determining the advisory vote. Law No. 3 was silent as to whether the vote of the state at large or the vote by senatorial districts should constitute the instruction.

Illinois has had two senatorial elections since it has had an advisory vote on United States Senator. In the primary of 1906 there were two candidates for the Republican nomination, Senator Cullom, and ex-Governor Yates. Yates announced that if he did not receive the majority of the votes at the primary election he would withdraw his candidacy. Having failed to secure a majority of the votes, he withdrew his candidacy, so that Senator Cullom was re-elected by the legislature without opposition. In the primary election of 1908, in which Senator Hopkins was a candidate for re-election and was opposed by Congressman Foss and ex-Senator Mason, the candidates did not pledge themselves in advance to abide by the popular vote. This fact had much to do with the production of the deadlock. Had the candidates unequivocally pledged themselves in advance to abide by the popular vote, the withdrawal of Foss and Mason, as did Yates after the primary of 1906, would have probably resulted in the immediate re-election of Senator Hopkins.

There is a well-defined sentiment in Illinois looking toward the amendment of our primary law along the line of the Oregon plan of direct election. This plan contemplates the amendment of the election laws so that the candidates of the respective parties receiving the highest number of the votes of the party at the primary election shall have their names printed on the ballot at the final election, so that the voters may register their choice as between the party candidates The plan contemplates a system of volunatry pledges by members of the legislature to abide by the popular vote. In view of the recent unfortunate experience of Illinois in the matter of electing a United States Senator, the movement for the popular selection of United States Senators has received great impetus.

PARTY BALLOT

While law No. 4 was under consideration by the legislature a determined attempt was made to write into the law the feature of the so-called "blanket" ballot. It was urged that the practice followed in some other states should be adopted, wherein the elector is privileged to take into the booth the ballots of all political parties and there in secret choose and mark the particular party ballot which he may wish to vote. This blanket ballot plan was vigorously opposed and finally defeated.

It was the position of the majority that a primary election is properly a contest within the political party. It affords a forum wherein factions of the party and individuals therein may submit to the electors of the party the party controversies. There would seem to be no more reason in justice why a Democrat should be permitted to participate in settling party matters of the Republican party, and *vice versa,* than that a Methodist should be permitted to participate in selecting the managing officers of a Baptist congregation. It is true that some electors who are independent in politics and who refuse to affiliate with a party may be prevented from participating in the party primaries, but that fact is of minor importance. An independent is free to affiliate with any party of his choice, so far as concerns the primaries, without in any manner interfering with his freedom of action at the final election. He may affiliate, let us say, with the Democratic party at the primary and yet be free to vote the Republican or any other ticket at the final election, or to split his vote between the several parties at the final election, as he may see fit.

The Illinois law provides that at the first election thereunder, in September, 1910, the elector can choose the political party with which he will affiliate. Having made his choice by participating in the primary election of that party, he can not participate in the primary election of any other party within a period of two years. The elector makes his choice as to party affiliation, and is bound thereto for a period of two years. At the expiration of the two years he is free to renew or change his affiliation as he may desire.

It was believed by the majority in the legislature, after considerable controversy, that this feature of the primary law was wise public policy. It prevents members of one party from interfering with the activities of other parties. It frequently happens that there is a lively contest in one political party at a time when there is little or no contest in the other party, in which event certain members of the latter party would, if not prohibited, cross party lines. Such action is manifestly unfair and unjust to the electors of the party. Accordingly, the Illinois law has rigid provisions making it an offense for an elector who has affiliated himself with one party to participate in the primary elections of any other party during a period of two years thereafter.

PARTY LEADERS

Law No. 3 and law No. 4 have made the party leaders elective. The Supreme Court of the state has sustained this feature of law No. 3, which has been duplicated in law No. 4. The court held that it was within the power of the legislature to make the party officers elective and to provide for their election in the same act which provides for the nomination of candidates for office.

The law provides for the election of a state committeeman from each of the congressional districts in the state. It provides also for the election of senatorial committeemen. In dealing with the subject of county committeemen and city committeemen a difficult problem has been presented. The only political division which is uniform thorughout the state, so far as concerns elections, is the precinct. The counties and cities throughout the state are divided into election precincts. Inasmuch as the Supreme Court has held that provisions respecting primary elections must be uniform throughout the state, it has been found impracticable thus far to devise any subdivision of the state as a basis for the election of county and city committeemen except the election precinct, which would be satisfactory to both Cook

county and the smaller counties. Accordingly, it has been provided in the primary law that a precinct committeeman shall be elected from each election precinct within the state. The precinct committeemen of the county constitute the County Central Committee. The precinct committeemen within the confines of any city constitute the City Central Committee.

In the counties outside of Cook county the number of committeemen makes a committee of a size such that it is easily workable. The precinct committeemen present a quite different problem in Cook county. In Cook county there are 1,480 precincts, thus making a County Central Committee so great in numbers as to be unworkable as a whole for managing purposes. If the precincts be grouped throughout the state into larger precincts for the purpose of electing county committeemen the number in Cook county could be reduced to a workable size, but in the smaller counties the number would be too small. In Cook county the precinct committeemen select chairmen of the respective ward delegations, who constitute the real political leaders. These political leaders, as it will be seen, are not under the direct control of the electors. It has been proposed to amend the primary law to provide for the election of the ward leaders in large cities, such as the City of Chicago. It was considered unwise to make such provision in law No. 4. because a difficult constitutional question as to uniformity is raised thereby which might invalidate the entire law. By making this provision in an amendatory act this separate act might be made to stand or fall on the question of its own constitutionality, without affecting the main primary law. While therefore, the election of precinct committeemen has been found in practice to give satisfactory results in popularizing the party leaders in counties outside of Cook county, serious problem is still presented in Cook county in the matter of the election of the real party leaders. The election of precinct committeemen while the ward committeemen are not elective under the primary law, removes the ward committeemen, who are the actual political leaders, from the direct control of the electors within the party. An amendment to the primary law to correct this defect is being insistently urged upon the legislature.

ORGANIZATION SLATES

In Cook county the organization leaders have adopted the practice of preparing a "slate" of candidates which they propose to support and submitting the same to the voters prior to the primary election. The strength of the organization leaders is then brought to the support of the slate of candidates as thus announced and the attempt is made, usually with success, to secure the endorsement of the slate candidates at the primary election.

This slating of candidates by the organization leaders has led to considerable controversy and difference of opinion in Cook county. The propriety of such a slate is still an unsettled question. There are those who contend that it is a violation of the spirit of the primary law for the party leaders to submit such a slate; there are those, on the other hand, who contend that this is the inevitable consequence of a direct primary law, and particularly in a metropolitan center of population such as Chicago, and that the preparation of such a slate is a proper, commendable and necessary practice.

Justice Hughes, while Governor of New York, in the drafting of the direct primary law which he urged upon the New York legislature, took the position that the preparation of such an organization slate was legitimate and proper, and he went to the extreme of making it mandatory, and giving the slated candidates precedence upon the ballot and the benefit of a designation upon the ballot showing that the particular slated candidates had been recommended by the organization. He thus recognized a trait of human nature and an apparently inevitable consequence of the direct primary principle when applied to a populous district or a large electorate. By means of such a slate the party ticket may be balanced as to nationality and geography. In a city like Chicago, where there are so many different nationalities, each having more or less cohesion in itself, it is deemed unwise for a political party not to recognize nationalities; and, moreover, in view of the fact that there is local pride in the several sections of the city, it is considered essential to a successful ticket that the geography of the city should be recognized in the make-up of a party ticket. If the primary election should be left without control and direction by the party leaders, it is argued that political chaos would result.

As a result of these considerations and by virtue of the efforts of the political leaders of each party to shape the nominations at the

primary election in a manner to harmonize factional differences and produce the strongest possible ticket for their party, the organization slate has resulted.

When the party organization is divided into two or more distinct factions which cannot coalesce in the presentation of a single slate, each faction may present its own slate, and this has happened in Cook county politics since we have been operating under the direct primary principle. In that event there will be two or more slates and each faction of the party organization will endeavor to nominate the candidates of its particular slate. The party primary thus affords a forum where this battle may be waged and the electors decide the result. The direct primary, however, tends to force the organization leaders to settle their factional differences, if that be at all possible, prior to the primary election. It enforces upon them the desirability of coalescing the different factions of the organization and the presentation to the voters of a single organization slate. In order to accomplish this result it is to the interest of the different factions in the party to settle their differences by compromise, and the organization slate frequently represents not only a balance as to nationality and geography but also a balance as to the factional controversies within the party.

When the party organization thus presents a unified slate, it has been found difficult to prevent the success of the organization slate at the primary. The direct primary, however, requires the political leaders to show their hands prior to the primary election, and in this respects the primary law has been advantageous. Under the old delegate convention system the people went to the polls at the primary election and selected delegates and subseqeuntly the delegates named in the convention the candidates upon whom the party leaders had agreed. The electors thus had prctically no choice in the matter. Under the direct primary the party leaders must act first. They must present their slate for the approval of the electors and the electors are free to accept or reject the recommendations. The leaders are confronted with the importance of presenting the best possible timber available, from a vote-getting standpoint, otherwise their recommendations are in danger of being rejected wholly or in part by the electors.

If the slating of candidates is to become the accepted practice certain collateral improvements should be made in our primary system to insure the slating of ideal candidates and the defeating of objectionable candidates when slated by the organization.

In the first place, the amendatory law above mentioned should be passed providing for the direct election of the ward leaders, as distinguished from the precinct committeemen, so that the real leaders who have to do with the framing of the organization slate shall speak with authority from the electors themselves. If the electors have a direct voice in the choice of their real political leaders, they should be willing to give substantial consideration to the recommendations of their thus duly constituted leaders. If the leaders do not make good recommendations, then when they present their candidacies for re-election as political leaders they should be held to account and should be defeated. A movement, therefore, in the correct solution of this branch of the problem would seem to be in the direction of popularizing the political leaders, bringing them closer to the electors, so that they will be in fact true leaders of the public opinion within the party and then their recommendations as to slated candidates will be of value and should, if good recommendations are made, be endorsed by the people at the election.

Another movement bearing upon the organization slate is that of civil service reform. One of the reasons why the organization slate has great chances of success is because it has behind it the thousands of precinct workers who hold political appointive positions. The organization thus has at hand an army of disciplined regulars who are more than a match for the private citizens who as amateurs participate in precinct activities. By the extension of the civil service rules thus reducing the number of regulars at the polls and increasing the relative number of those who participate as amateurs and not as professionals, the power of the organization will be minimized and a more exact balance will be struck.

A third movement which will have a bearing upon the matter of organization slates is the development of civic bodies of various kinds which are gradually acquiring strength as moulders of public opinion and which will pass upon the personnel of the organization slate, throwing their influence for or against the slate as a whole or individuals thereof according as the organization leaders have acted wisely or unwisely in their recommendations. The newspapers, as moulders of public opinion, exercise and will continue to exercise a very substantial influence upon the activities of the organization leaders in preparing their slates and securing their adoption.

A fourth aid along this line would be the adoption of the plan of publicity pamphlets, printed and delivered to each elector by the

government. The system has been used with success in Oregon. Each candidate is allowed a certain number of pages in which are printed his campaign arguments. A means of educating the voters would thus be provided which would increase the opportunities of candidates who might oppose the organization slate.

A fifth movement is the reform of the electorate itself. But a small percentage of the voters have thus far availed themselves of the primary. The larger the number of voters who participate at the primaries, the more difficult is the task of the organization leaders to elect their slate. The movement, therefore, to popularize the primary and induce the electors to participate therein tends to minimize the influence of the organization.

It will be seen, therefore, that in a congested center of population like Chicago, and in a state or county where the political conditions are complex and questions of nationality and geography and factional differences must be given consideration, the preparation of an organization slate, or the preparation of several slates by different factions of the organization, or the preparation of slates by civic organizations or other moulders of public opinion, may safely be considered legitimate activities under the direct primary law, but amendments should be made to the statutes of the state to safeguard the rights of the electors and public activity should develop such institutions for the moulding of public opinion as will hold the organization leaders to the proper channels of activity.

EXPENSE OF PRIMARY ELECTIONS

One of the principal objections which has been urged against the direct primary law as evidenced by its working in Illinois is the expense to which candidates are subjected. Undoubtedly many candidates have expended large sums of money at the direct primaries; more often these large sums have been unwisely and unnecessarily spent. There is great opportunity for the wasting of money at primary elections and there are candidates who have undoubtedly availed themselves of the opportunity. The consensus of opinion seems to be that abuses along these lines should be prevented by statute. They are the proper subject-matter of a corrupt practices act which should carefully regulate and control expenditures by candidates and their supporters. Inherently there is no reason why a direct primary should be any more expensive than a primary held under the old dele-

gate convention system; in fact, statistics would probably show that as much or more money has been spent by candidates under the old system when compared with the expenditures under the new system.

Take, for instance, a state-wide campaign in the state of Illinois. A candidate for Governor and his supporters would find it necessary under the old system, to secure the support of the organization leaders in each county and furnish funds for the proper conduct of the campaign in such counties. If the organization leaders were hostile in was necessary to enlist the activities of some minority faction or new leaders and conduct a campaign throughout the county in an effort to secure the delegates. All of this requires money, and it is a well-known fact that in some gubernatorial campaigns in Illinois enormous sums of money have been spent by candidates under the old convention system.

Under the direct primary system the candidate may, if he cannot secure the support of the county leaders, and must even if he does, appeal directly to the voters of the county. A single speech in the county by the candidate has been known to secure the county for the candidate. The expense of such a campaign may be so regulated as to be very much less than the expense of accomplishing similar results under the delegate convention system. A substantial movement is in progress in Illlnois looking toward the enactment of a corrupt practices act which will adjust this matter of expense in conducting primary, as well as final, elections.

In order to equalize candidates from the standpoint of wealth the publicity pamphlet feature, above mentioned, which has been adopted with success in Oregon, is receiving consideration. The government issues a pamphlet which is forwarded prior to the election to each elector. Each candidate is privileged, upon the payment of a prescribed sum, to a certain number of pages of this pamphlet, in which he may print the campaign material which he may wish to circulate. This pamphlet is printed and distributed at public expense, and a forum is thus provided for all candidates at a small cost which enables them to appeal to each elector and set before him the issues of the campaign. The publicity pamphlet does away with the necessity of mailing campaign literature and expenses due to other forms of publicity.

PETITION.

The present law provides that the candidate, as a condition precedent to having his name printed on the primary ballot, shall file a petition signed by a specified number of electors of his party. For most offices the petition must contain one-half of one per cent of the party electors in the district. The names of candidates for each office are to be printed upon the primary ballot in the order in which the petitions are filed, either with the Secretary of State or the County Clerk, as the case may be. This leads to a disgraceful scramble to get an early position in the filing llne. Men have been known to stand in line the day and night preceding the day upon which filing of petitions has been authorized, in order to get a favorable position on the ballot. In a recent instance an official with grim humor opened and filed all petitions which had been received by mail before accepting petitions from those standing in the filing line. This manner of determining the order in which the names shall be printed on the ballot is eminently unsatisfactory. An attempt was made in the enactment of law No. 4 to provide a more equitable method of determining the position on the ballot, but no plan could be devised which would meet the approval of a majority of the legislature. In consequence, it was finally found necessary to revert to the plan above mentioned, which had been the plan adopted in law No. 3.

Efforts will undoubtedly be made to amend the law to correct this defect. It has been proposed to arrange the names alphabetically, but objection has been raised to this plan becaise it gives an advantage to a candidate who by the accident of birth may have acquired a name commencing with one of the early letters in the alphabet. It is contended by some that the position of first place on the ballot is, in connection with many offices, equal to an advantage of 10 to 15 per cent over subsequent positions.

It has also been proposed to provide for the rotation of the names upon the ballot, one name occupying the position of precedence upon a given number of ballots and then the type being shifted so as to bring another name at the top of the list, and so on, the type being shifted frequently enough so that each name will occupy the position of prominence upon practically as many ballots as the name of any other candidate. Where there are but few offices to be filled and but a few candidates, such a plan of rotation seems to be feasible. In Cook County, however, where there are upwards of fifty offices to

be voted upon at the primary, and a number of candidates for each office, and where the county, congressional, senatorial, sanitary district and other political divisions overlap, it has been found impracticable thus far to devise any system of rotation which seems at all feasible.

It has also been proposed to provide a system for placing the names of the candidates upon the ballot by lot. It has been proposed that when the candidate files his petition a card should be made out containing his name and the office which he seeks, and that prior to the primary election, on a specified date, certain designated public officials, in the presence of any candidates who may wish to attend, shall shuffle the cards in a suitable receptacle and have them withdrawn in an impartial manner in the presence of those in attendance and in a manner to prevent favoritism. Such a plan would insure the placing of the names upon the ballot by chance and each candidate would have an equal opportunity for precedence of position. This plan would seem to be the most feasible and equitable of any which have been proposed.

In the Hughes law presented to the New York legislature it was proposed to give the candidates receiving the endorsement of the organization precedence upon the ballot. It would seem that this is an unnecesary advantage, as the endorsement by the political organization in itself usually carries a very substantial advantage to the candidate. To equalize opportunities, therefore, the organization candidate should rather be handicapped than aided by position upon the ballot.

SHORT BALLOT

The experience with the direct primary in Illinois has demonstrated the urgent importance of reducing the number of candidates on the ballot. In Cook County at the biennial primary election there are more than fifty offices to be filled. It is apparent that the elector cannot familiarize himself with the personnel of the candidates for these numerous offices. The result is that the elector must follow the endorsement of the political organization, or some faction, or the endorsement of some civic organization or newspaper. If the direct primary principle is to become an established institution, it would seem essential that steps should be taken to substantially reduce the number of elective offices. By thus reducing the number of offices public attention can be more readily centered on the fewer

offices remaining, and the qualifications of the various candidates can be more readily determined.

There are many offices, such as Clerks of Court and the like, which are purely ministerial and in the conduct of which there are no questions of policy which would make it advisible that such offices should be elective. The Constitution and the statutes should be amended to make these offices appointive, thus removing them from the ballot. All judicial offices should likewise be removed from the ballot at which partisan officers are to be elected. The judiciary should be nonpartisan and a separate judicial election should be provided in order that the judiciary may be completely divorced from partisian politics. The Circuit Court judges in Cook County are elected at a judicial election held in June. The Superior Court judges, the County judge Probate judge and the Municipal Court judges are elected at the regular biennial election. All of these judicial offices should be removed to the separate judicial election. The primary for the nomination of judicial candidates, if they are to be nominated at a primary, should likewise be a separate and distinct judicial primary. There seems to be no reason, however, why the nomination of judicial candidates should be made at a primary. Candidates for judicial office should be nominated by petition, thus further removing the judiciary from partisan activities.

The removal of the judicial candidates to a separate election is thus a movement in the direction of the short ballot. The making of purely ministerial offices appointive, instead of elective, and thus removing them from the ballot, is a further movement in the same direction.

The experience with the direct primary in Illinois has shown it to be a marked improvement over the delegate-convention system. No human institution is perfect, and defects have developed in connection with the direct primary, particularly as applied to a populous center like Chicago. Substantial amendments to the primary law and to collateral statutes are necessary to improve the working of the primary principle. Some of the more important improvements have been indicated above. It would seem probable, in view of the experience to date, that the great mass of the voters prefer the direct primary to the former system of delegate nonimations. In this former system the voter had little or no influence upon nominations. In a direct primary he has, if he will avail himself of the opportunity, a forum wherein he may exercise his influence. Before the direct primary is

fully effective the voters must avail themselves of the opportunity to participate in the primary election. This is a matter which cannot be corrected by statute but only by personal reformation. I believe that if a vote of the electors of the state were taken they would overwhelmingly vote that the direct primary system in Illinois has been a marked success.

DIRECT PRIMARIES IN MISSOURI

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Missourians have been conservative in their political ideas, and have been slow to adopt innovations in their political institutions The first Constitution of 1820 incorporated those political ideas and institutions which had been tested by the older states, and excluded the new democratic doctrines of popular election and rotation in office, which were being agitated, and were just beginning to secure recognition in some of the states. The heads of the state administrative departments did not become elective until 1851, while the judiciary held during good behavior until 1849, and were not chosen by popular election until 1851. While the system of voting by ballot was introduced during the Territorial Period, it was abandoned in 1822 in favor of the viva voce system, which continued to be the general method until 1863, though the ballot system had been introduced in a number of counties by special acts beginning in 1845. Even to this day there is retained the provision for numbering a ballot to correspond with the number opposite the name of the voter in the poll book, so that it is impossible to have perfect secrecy of the ballot.

More recently this political conservatism appears to have become weakened, and we find Missouri among those states which have tested two important governmental experiments—the Compulsory Direct Primary, and the Initiative and Referendum. It is the purpose of this paper to indicate the origin and essential features of the Direct Primary in Missouri, and to discuss some of the questions which have arisen from its adoption.

The Direct Primary, as a system of making party nominations has existed in Missouri for a long time, but, until recently it was optional in character, and its use was limited to the selection of candidates who where to be elected wholly within a city, county, or congressional district. As early as 1875 a Direct Primary Law was

enacted for St. Louis County. It was optional in character and left most matters to be regulated by party officials. Judges and clerks were required to conduct the election under regulations similar to those obtaining in regular elections, and penalties were prescribed for bribery and illegal voting. It was expressly provided that none of the expenses of such elections should fall upon the County or State. General statutory definition of the Direct Primary came in 1889, when the introduction of the Australian Ballot System made it necessary for the state to regulate in some degree the method of nominating candidates for public office. Before that date aside from the Act pertaining to St. Louis County, there had been no legal recognition or regulation of political parties, or their activities. At that time in addition to the convention of delegates and petition by voters, the Direct Primary was officially recognized as a proper method of nominating candidates for state, district, county, and other local offices.

This optional primary election law of 1889 was quite limited in its scope, the control of the election being left almost entirely to the political party. The statutory provisions were restricted to those necessary to secure certification of the nominees to the Secretary of State or County Clerk, and to punish illegal voting and fraudulent returns. The time and place of the election, the election officials, the qualifications of voters, and of candidates, the counting and canvassing of the votes, and the determination of the results were all left to the decision of the officials of the political party concerned.

Two years later a more comprehensive optional law was enacted, its application, however, being limited to the city of St. Louis, and to political parties which cast one-fourth of the total vote at the preceding general election. Under this Act the recorder of voters was given powers regarding notice of the election, polling places, selection of officials, printing and distribution of ballots and poll-books, and the certification of successful candidates. Candidates were required to pay fees which were used in defraying the expenses of the election. The provisions of this Act were made to apply to Kansas City in 1893.

In 1899, under a new statute enacted for St. Louis, the state appointed board of election commissioners took the place of the recorder of voters. It was also made a misdemeanor for a person to vote or offer to vote without being a member of the political party holding the primary, or after having voted at the primary of the opposite

party held for the same purpose. The law was again revised in 1901, the most important change being a provision for the registration of voters for primary purposes. In the same year Kansas City came under the operation of a new law enacted for counties having 175,000 population. This Act, so far as it applied to Kansas City, gave considerable power to the Board of Election Commissioners appointed by the Governor.

Despite the existence of the general optional law for primary elections, the Direct Primary was confined to the nomination of candidates for local and district offices, and its use for this purpose was far from universal. The party leaders preferred the convention system of nomination, which made possible the selection of a stronger ticket through a territorial distribution of the candidates. They looked with disfavor upon the Direct Primary, because of the bitter animosities developed among different leaders and factions of the party.

The people, however, began to manifest their dissatisfaction with the convention system. While the latter was governed by statutory regulation, it did not harmonize with the movement for direct participation of the people which was gaining in strength and led to the adoption of the Initiative and Referendum in 1908. It was believed that the convention lent itself to the schemes of the political boss and machine, and revelations of official corruption intensified the popular discontent with existing political conditions.

The first steps looking to a general state primary were taken during the gubernatorial campaign of 1904. Public opinion had been considerably aroused during the preceding year, as a result of the disclosures of bribery and corruption in the municipal assembly of St. Louis and the General Assembly of the State. Joseph W. Folk who, as Circuit Attorney of St. Louis had taken an active part in exposing and prosecuting the guilty parties, was a candidate for the Democratic nomination for the office of Governor. As his candidacy was not favored by the leaders of the regular party organization, his supporters appealed directly to the people and insisted that the voters in each county should be given an opportunity of expressing their choice, which should be binding upon the delegates to the State Convention. This plan met with widespread approval, and, despite the opposition of the party leaders, was adopted in a large number of counties, and resulted in the instruction of a sufficient number of delegates to give the nomination to Mr. Folk. Moreover, the State Convention, which nominated him, included in its party platform a

demand for the enactment of a general primary election law. Mr. Folk, who was practically nominated by direct primary, was the only candidate on the Democratic State ticket elected—a fact which could not fail to impress party supporters. The two houses of the General Assembly, which met in 1905, differed in political complexion, and this probably explains the failure to enact a primary election law at that session. In 1907, however, the reform forces were successful in passing a law for a general compulsory direct primary.

This act has introduced revolutionary changes in the system of nominating candidates for public offices. It applies to the nomination of candidates for all offices to be filled at the November election except candidates for the position of presidential electors. It substitutes statutory regulations for the rules of the political party, which formerly governed this matter, and provides for the administration and supervision of public officials instead of party committees. It does not seek to abolish political parties, but on the contrary, brings them within the scope of legal definition and gives them official recognition. In 1909, after one primary election had been held under the law, the legislature revised the entire act, introducing some significant changes which will be indicated in the discussion of the features of the system.

The law provides that the primary elections of all political parties shall be held on the same day, which is fixed for the first Tuesday in August preceding a general election, and that the polling places shall be the same as those used in general elections. Originally, in order to have his name placed upon the ballot, it was necessary for the candidate to file nomination papers signed by a certain percentage of the voters of his party, the number necessary varying from 1 per cent to 3 per cent according to the district from which the candidate was to be chosen. The only exception to this rule was in the case of candidates for county offices, who were required to file a declaration. The labor and expense connected with securing the signatures proved so great that in the law of 1909 these provisions were omitted, and it was provided that any person could have his name placed upon the ballot as a candidate by filing a declaration and paying a certain sum to the committee of his party to be used in meeting the expenses of the party. This fee varies from $5 for county offices to $100 for state offices, and is intended to restrict the number of candidates to those who are in good faith seeking the office. Provision is made for the

nomination of candidates who do not belong to any political party, the fees in such cases going into the state treasury.

The ballots used in the primary election are prepared by public officials and are printed and distributed at public expense. There are separate ballots for each political party and one for non-partisan candidates. Fusion of parties is prevented by the provision that no candidate's name can appear on the ballot of more than one party. Moreover, if a voter write upon his ballot the name of a person who is a candidate for the same office upon some other ballot, such vote will not be counted.

The original law of 1907 provided that upon each ballot the name of the candidates should be arranged alphabetically, according to surname, under the title of the respective offices. In the election of 1908 it was observed that candidates whose names appeared at the head of the ticket had a great advantage on account of the tendency among indiscriminating voters to vote for the first name on the list, at least in the case of minor offices. It was significant that while there were a number of candidates for some of the offices, there was not a single instance in any of the primaries for state offices in which the candidate whose name appeared first upon the list ranked lower than second in the contest. Hence, the demand was made for a change, and the law of 1909 provides that in the city of St. Louis and in all counties containing cities of 100,000 inhabitants, the names shall be so alternated on the ballots that each name shall appear an equal number of times at the top, bottom, and each intermediate place in the list of candidates for any office. The restriction of this provision to the more densely populated districts was due to the fact that the lack of discrimination appeared to be greatest in those districts. In the election of 1910, however, there was considerable evidence of the existence of a similar situation in the other sections of the state. For example, a candidate for railroad commissioner on the democratic ticket whose name appeared first on the ballot received a large vote in practically every county, though he was not known outside of St. Louis and had made no canvass for the position.

Another important difference between the laws of 1907 and 1909 is to be found in the provision regulating the right of the voter to select the party primary in which he desired to vote. Under the optional primary election law this had been left entirely to party

officials. The law of 1907 gave the elector perfect freedom in this respect. This provision aroused considerable party opposition, as it made it possible for voters of one party to vote in the primary of another party and thereby nominate a candidate who might weaken the party ticket. The fact that in the primary election of 1908 there was no contest in one of the leading parties for the nonination for five principal state offices made this possibility all the more evident. As a result the legislation of 1909 undertook to restrict a voter to the primary of the party with which he is known to affiliate. The right to change party affiliations, however, is recognized in the provision that the voter when challenged on this point shall, nevertheless, be permitted to vote provided he takes an oath or affirmation to support the party nominees at the next general election.

The law recognizes the right of each party to be represented by challengers during the casting of the vote, and by the chairman of the county committee, or his agent, during the canvass and return of the vote. The judges and clerks of the primary, however, are provided in the same manner as at general elections. The statutes regarding the holding of elections, solicitation of voters at the polls, challenging of voters, etc., are made to apply to primaries so far as possible, it being the declared intent of the act "to place primary elections under the general regulation and protection of the laws now in force as to general elections."

Not the least significant of the provisions of the law are those affecting party organization. The necessity for a legal definition arose partly as a result of the legal recognition of the party and partly because the establishment of the primary did away with the usual method of establishing party organization through mass meetings and conventions. The original law provided that at the primary election the voters could elect one committeeman from each ward or township. The ward and township committeemen make up the county committee of their party. Under the previous system of party regulation the county committee was based generally upon township representation, being either equal or proportional to the party vote cast by the respective townships. The provision of the primary law caused great dissatisfaction, because of the increased representation given to incorporated cities and to townships which cast only a small percentage of the party vote. The Act of 1909 amended the provision so as to enable the party committee to increase the number to two from each ward or township, but as this did not affect

the question of relative representation, there is still a strong demand for the amendment of this provision.

The chairman elected by the county committee is ex-officio a member of the judicial, senatorial, and congressional committees of the district of which his county is a part. Each congressional committee elects two members of the state committee. These members of the state committee meet at the State capitol on the second Tuesday in September and organize by electing a chairman and other officers.

The desirability of a party platform is also recognized, provision being made for a state convention of each party to meet immediately after the organization of the state committee. This convention is composed of the members of the state committee, and party nominees for state officers, representatives in Congress, and state senators and representatives. The platform is to be published not later than 6 p.m. of the following day. A convention may also be called by the state committee for the purpose of nominating presidential electors, electing delegates to national conventions, and members of national committees, but questions relating to state offices and policies may be dealt with only as provided in the primary law.

At the same session at which the first compulsory primary law was enacted there was also passed a law providing for a primary election for the nomination of candidates for United States Senator. This law is significant not only of the attempt to control party nominations, but as part of the general movement to secure direct election of United States Senators. Missouri is one of the states which has called upon Congress to convene a constitutional convention for the purpose of amending the constitution of the United States with regard to this matter.

Under the senatorial primary law any person may become a candidate for nomination by filing his application with the Secretary of State. This primary is held at the same time as the general election next preceding the vacancy in the office. The names of the candidates of each party are to be printed upon the ballot of such party. While a voter may write in a name not appearing upon the ballot, he cannot vote on one ticket for a candidate whose name is printed upon another ticket. The law declares that the person receiving the highest number of votes upon each party ticket shall be the caucus nominee of such party and all members of said party in the legislature shall vote for said nominee. While this provision is not binding upon the members of the legislature, it was observed in 1909 and will doubtless be followed in 1911.

The direct primary for state purposes has had only two trials in Missouri. In 1908 it was used for the nomination of candidates for eight state offices, while in 1910 only three state positions were to be filled. In both years candidates for United States Senator were nominated. While the system has not had sufficient trial in this state to justify definite conclusions respecting its operation, it is possible to indicate certain tendencies which have been manifested.

The first direct primary in 1908 appeared to justify the fears of party leaders regarding the effect of the bitterness developed in such contests. In the Democratic party the campaign for the nomination for governor aroused considerable feeling among supporters of the different candidates. The result was close and led to charges of fraud by one of the defeated candidates. While other causes may have affected the situation, this condition appears to have been chiefly responsible for the defeat of the Democratic nominee for governor, who ran considerably behind the rest of his ticket. The influence of the primary election upon this result was emphasized by the fact that there had been no contest in the Republican primary for the principal offices and no bitterness had developed among members of that party.

On the other hand the belief on the part of many that the direct primary would weaken party organization and eliminate political "bossism", has not been borne out by the facts in this state. In the primaries of both parties evidence of the existence of "slates" has appeared. In the Republican primary of 1908 there were contests for only two of the seven administrative offices, and it was charged by the opposition that this was due to a "slate" agreed upon in advance of the primary. The truth appears to be that the party, having by unanimous demand forced the candidate for governor into the contest, was willing to follow his preference in the matter of the other offices, and that knowledge of this fact caused most of the other aspirants to refrain from entering the contest.

It is clear that where contests for the nomination have existed, the candidate favored by the party organization has generally been successful. This tendency has been especially marked in the large cities. In the St. Louis primaries of last August the "slate" of one party was broken in only two cases, while in the other party only one candidate was nominated without the approval of the organization.

In one respect the system has strengthened the parties by practically eliminating all opportunity for an independent ticket or can-

didate. It is true that the law makes provision for the nomination of independent candidates at the same time that other candidates are nominated. But a real independent ticket, nominated as a protest against machine rule, will not be possible, as the necessity for it will not be known until after the nominations of the regular parties have been made. On the other hand, the political party committee can fill vacancies, not only those occurring after the primary, but also where they are due to the failure of any person to offer himself as a candidate.

An interpretation of this provision was made necessary by the fact that a person who received a few votes, where no one had offered himself as a candidate, claimed to be the party nominee. The attorney-general ruled against this claim and held that a vacancy existed which could be filled by the party committee. A more interesting case grew out of the withdrawal of the name of a candidate who had no opposition for the nomination. The name was withdrawn a short period before the expiration of the time for filing a declaration of candidacy and was made known to only one person, who promptly filed his declaration. When the matter became public, considerable feeling was aroused, and led to the announcement of another candidate. While the name of the latter could not be printed on the ballot, the attorney-general ruled that it could be written in, and, as a result, he secured the nomination and election.

While the direct nomination system has not weakened the party organization nor lessened the influence of the professional politician, it is not regarded with favor by most party men. The writer has recently interviewed and corresponded with a number of men in each party, representing all classes from the ward politician to the party leader, and including some who favored the enactment of the law. Surprising unanimity appears in the expression of unfavorable opinions regarding the operation of the system. Among the chief objections urged may be mentioned the great expense, the opportunity afforded the demagogue, the unintelligent character of voting on candidates for minor state offices, the lowering of the standard of candidates, as a result of the above causes, the inclusion of nominations for judicial offices, the nomination of minority candidates, and the nomination of candidates for United States Senator at the same time as the general election.

While the expense of the system, so far as the candidates are concerned, has been reduced by the elimination of the provision for nom-

ination papers with signatures, a considerable burden still remains. The great expense connected with the canvass of a large state, including 114 counties in addition to the city of St. Louis, practically prohibits a man with limited means from becoming a candidate for a state office. Criticisms of the expense falling upon the state and county are not of much weight if improvement results from the adoption of the system.

As indicated above, evidence of unintelligent voting exists. While the effect of this can be somewhat equalized, it cannot be overcome by abandoning the alphabetical arrangement of the names on the ballot. The candidate with a special aptitude for campaigning has been shown to have a great advantage. It is clear, moreover, that large numbers of the voters have no personal acquaintance with nor information regarding any candidates for state offices except that of governor. Specific evidence of this is afforded by the fact that in 1908 the total vote for the minor offices which were contested was 7 per cent behind the vote for Governor in the Democratic primary, while in the case of the Republicans the loss reached 15 per cent.

There is little evidence, however, that the above causes have tended as yet to lower the standard of candidates for State offices. It is noteworthy, however, that during the present year in the case of two vacancies, one upon the Supreme Court and the other upon the St. Louis Court of Appeals, the number of well qualified candidates whose names were submitted to the state and district committees respectively, was much larger than in the case of the direct primary which had been held earlier in August. This emphasizes the argument that judicial offices should not have been brought under the direct primary, a fact which is further strengthened by the existence of inadequate salaries for judges.

Minority candidates have been nominated by both parties, the proportion of the total vote received by nominees for state offices for which there were more than two candidates, varying from 26 per cent to 34 per cent in the Democratic primary. In the Republican primary, where not more than three candidates contested for any nomination, the figures were 40 per cent and 42 per cent.

It is certain that in large cities corrupt politicians have profited by the existence of a number of candidates. In some cases the number has been artificially increased under the skillful manipulation of the boss. In Buchanan County, in which the city of St. Joseph is located, there were in the primary of 1908 fourteen candidates for

the office of sheriff. The successful candidate was a saloon keeper, who, according to a correspondent, was opposed by all the newspapers and by the best element in the party. He received only 21 per cent of the primary vote and only 45 votes more than his nearest opponent, but this was sufficient for his nomination and he was duly elected to the office.

The direct primary for United States Senator was placed on the same date as the general election for the purpose of getting out the party vote. Some objection has been raised to this plan on the ground that the voters should know who the nominees are before voting for members of the General Assembly. Another criticism has come from the smaller counties which do not have under this system as much weight in determining the results, as is secured to them under the basis of representation in the House of Representatives, which discriminates against the larger counties. For example, the city of St. Louis, which casts one-fifth of the total vote has only one-ninth of the members of the House of Representatives.

It has been observed that the vote in the senatorial primary is much smaller than the vote for candidates for election. This is not due entirely to lack of interest in the primary, but results also from the fact that where there are more than two candidates for nomination, frequently only one name is erased, and, hence, the ballot is not counted. In both senatorial primaries of both parties there have been two prominent candidates in addition to one or more minor candidates, and the tendency on the part of many voters was to scratch only the name of the chief opponent of his candidate.

At the present writing it appears probable that the direct primary law will be profoundly modified at the session of the General Assembly, which will convene next month. The sentiment is quite strong for the substitution of a convention of delegates elected by direct primary for the present method of nominating minor state officials. The indications are that the compulsory direct primary will be retained for the office of governor and congressmen, while for local offices the matter will be left optional with the party committee.

While their experience with the direct primary has disappointed the anticipations of the majority of voters, they retain the impression of its possibilities as a means of controlling or overthrowing a party organization. One of my correspondents, who describes himself as a ward politician, and points out the defects of the direct primary, admits that "if the time ever came when the people were thoroughly

aroused on any single candidate, the direct primary gives a power which they do not possess under any other form of nomination." Whatever action may be taken by the present legislature, it is certain that public regulation of parties will not be abandoned, and means will be preserved by which the people will be able to resort to the direct primary, when the demand for it arises.

PRIMARY ELECTIONS IN IOWA

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The first effort toward securing a primary election law in Iowa was made in 1896, when three different bills were rejected by the Twenty-sixth General Assembly. In 1898 renewed efforts resulted in the adoption of a local optional primary law; and by 1902 this local primary law had been adopted in thirty-six of the ninety-nine counties of the State by at least one of the parties.

The movement for a compulsory State-wide primary election law was begun in January, 1902, when State Senator J. J. Crossley introduced a measure in the Twenty-ninth General Assembly known as the "Crossley Bill." This bill was never even reported to the Senate; while the House measure, which was identical with that of the Senate; was lost after the addition of many amendments and a long and heated debate. Senator Crossley introduced his State-wide primary election bill at each succeeding session of the General Assembly until it was finally adopted on April 4, 1907.

The chief features of the Iowa primary election law, as originally adopted in 1907, are as follows:

1. The law is compulsory and State-wide for all except judicial offices.

2. It provides for popular choice of Presidential electors and an advisory vote on United States Senators.

3. All parties participate in the primary on the same day at the same place and use the same ballot box.

4. The judges and clerks of the primary election are chosen in the same manner as for general elections and with the same compensation.

5. The Australian ballot is employed, each party having a separate ballot, and the names of candidates were originally arranged alphabetically under each office.

6. Party affiliation is determined by the elector's oral choice of ballot, which choice is made a matter of record. But party affilia-

tion can easily be changed by filing a declaration of change with the County Auditor ten days prior to the primary election, or by taking an oath when offering to vote that one has in good faith changed his party affiliation.

7. Candidates for nomination must file nomination papers from thirty to forty days prior to the primary election, depending upon the office sought. These nomination papers must contain the signatures of a certain per cent of the candidate's party vote depending upon the office sought.[1]

8. A candidate to receive the nomination of his party must receive at least thirty-five per cent of all the votes cast by his party for such office. Tie votes are determined by lot, and vacancies are filled by the party committee for county, district, or State.

9. Delegates to county conventions are chosen at the primary election, as well as members of the County Central Committee. The county convention, composed of the delegates chosen in the various voting precincts, are empowered to make nominations of candidates for the party for any office to be filled by the voters of a county where no candidate for such office has been nominated at the preceding primary election. The county convention selects delegates to State and district conventions. And any of these conventions may adopt resolutions or platforms.

10. Numerous penalties are imposed for misconduct on the part of officials or for any corrupt practices.

Such are in brief the provisions of the Iowa primary election law as originally adopted in 1907. Primary legislation was one of the local issues upon which the Standpat and Progressive wings of the Republican party in Iowa were divided. The Progressives heralded its passage as one of the greatest political reforms ever accomplished in Iowa, while the Standpatters declared that it was passed only to serve the ambitions of leading Progressives. They urged many objec-

[1] Nomination papers of candidates for United States Senator, Elector at Large, and State officers must have the signatures of 1 per cent of their party vote in each of at least ten counties and in the aggregate not less than one-half of 1 per cent of the total vote of his party in the State as shown by the last general election. Candidates for offices chosen from districts composed of more than one county must have the signatures of 2 per cent of their party vote in at least one-half of the counties and in the aggregate not less than 1 per cent of his party vote in the district. Offices filled by the voters of the county must have the signatures of 2 per cent of their party vote in the county.

tions to the law and declared that it would never work well in practice. The first application of the law in 1908 was made the occasion for one of the bitterest political contests in the history of the Republican party in Iowa.

The first fruits of the Iowa primary was the apparent choice of candidates in alphabetical order. It was claimed that Allison won over Cummins in the senatorial primary because of his alphabetical advantage. The sudden death of Senator Allison necessitated a special primary on the senatorship, and in this primary Cummins won easily over Lacy. The candidates for Governor and Lieutenant-Governor likewise appear to have been selected alphabetically. The Standpat Carroll won over the Progressive Garst for Governor; while the Progressive Clarke won over the Standpat Murphy for Lieutenant Governor.

The vote cast at the first primary election varied from 40 to 60 per cent of the party vote in different localities. Many saw in this light vote the failure of the system. The public announcement and record of party affiliation undoubtedly kept many away from the polls.

Those who opposed the passage of the law, though for the most part successful at the polls, saw all of their objections verified in the first trial of the law, and still condemned it. In like manner those who were responsible for its enactment, though defeated by its provisions, still praised the system and saw no good reason for abandoning it.

These two opposing views are clearly reflected in the press comments on the first of the primary election law in Iowa. The *Register and Leader*, the leading Progressive organ in the State, in an editorial of June 5, 1908, entitled "Stand by the Primary" says in part:

> Not only has the popular will been expressed but it has been expressed quietly, without disorder, coercion or bribery, there has been a freedom from drunkenness and fraud. As for expense, which will be most talked about by those who would abandon the new system, we undertake to say that more money has been spent in a single campaign in the 7th congressional district than has been spent this year in the entire state. . . . It should be remembered that the Australian ballot was not wholly satisfactory on first trial. But no one would propose to go back to the days of the unlegalized ballot.

The *Sioux City Tribune*, an organ of the Progressive Republicans, says:

> The *Tribune* had a large force of trained men on the streets of Sioux City all day and most of the night, and there was little criti-

cism of the primary. On the contrary man after man was heard to praise the law as he came from the booth where he had,unmolested, been able to declare his judgment on men and issues.

The number of votes cast and the universal good order and good feeling throughout the day are unassailable testimony to the wholesomeness and popularity of the law. In this city there would not have been 400 men at caucuses, whereas more than 4000 of the very best citizens were at the primary .

The *Burlington Hawkeye,* an organ of the Standpat Republicans, remarks:

The light vote was a surprise all around. . . . After all the publicity given the primary law itself, the energetic campaign by public speakers and the press, and one of the biggest political uproars Iowa ever had, one that by its strenuousness attracted National attention, the people failed to come out and vote. . . . in the numbers predicted. . . . is it worth the extra expense to the tax payers?

The *Dubuque Times,* Standpat, declares:

The primary election law is a failure, because it imposed two general elections and two campaigns upon the press and the people, because it unnecessarily imposes enormous expense upon the tax payers of the State and upon the candidates or their friends.

The *Cedar Rapids Republican,* an organ of the Standpat Republicans, comments as follows:

Without waiting for the results so far as candidates are concerned. . . . it is safe to say that enough has transpired to demonstrate that it is utterly vicious, and worse even than it was said to be by those who opposed it at the time it was passed. Every objection urged against this law has been shown to be well founded.

Other comments on the operation of the law declare that the primary nomination method is a good deal of a farce; that it is as large and unwieldy as A. W. Richard's corn husker; that it was the contest and not the primary that drew; that the law ought to be benched; that it is a great victory for clean politics; that it is the correct system and by its enactment Iowa has taken a mighty step forward in popular government; and that it will go down in history as a grand fizzle.

The *News,* published at Winterset, the home of Senator Crossley, the father of the Iowa primary law, says:

Senator Crossley leaves next week for Alaska. Here's hoping that he takes his primary bill with him and dumps it into the Arctic.

The Iowa primary election law was amended in seventeen different sections at the first session of the General Assembly following its adoption. Most of these amendments, however, do not materially change the character of the law, but relate chiefly to procedure or are designed to make the law more explicit.[2]

[2] The amendments to the Iowa primary law passed in 1909 are as follows:

1. The statement that the vote on United States Senators is advisory was repealed. (section 1).

2. Primary expenses are to be borne the same as general election expenses. Judges and Clerks are to receive twenty-five cents per hour (section 5).

3. The time of opening and closing the polls in precincts where registration is not required was changed (section 6).

4. Candidates for party committeemen are not required to file nomination papers (section 10).

5. Secretary of State is to arrange names of candidates for State offices as they shall appear on the ballot in the several counties (section 13).

6. The County Auditor is to arrange names of candidates for district and county offices as they shall appear on the official ballot.

7. A slight change is made in the form of the primary ballot (section 14).

8. Provisions relating to the form and distribution of sample ballots were enacted (section 15).

9. Candidates are given the right to demand a recounting of ballots under certain conditions (section 18).

10. The Board of Supervisors are to make a list of the candidates who failed to receive 35 per cent of their party vote and give a copy of the same to the chairman of each party's central committee (section 19).

11. The Board of Supervisors are required to publish the results of the primary election (section 21).

12. The Executive Council is to make a list of the candidates for State offices who failed to receive 35 per cent of their party vote, and give a copy of the same to the chairman of each party's State Central Committee (section 22).

13. Provisions for the proper certification of nominations made by conventions or party committees were added (section 23).

14. The manner of filling vacancies for the office of United States Senator occurring after the primary but before the general election was provided at a special session of the General Assembly after the death of Senator Allison (section 24).

15. New Provisions relating to date of the county convention, to notification of delegates and their term of office; and limitations on powers of the county convention were made (section 25).

16. Provisions relative to district conventions were made similar to those for the county (section 26).

17. Provisions relative to the State convention were made similar to those for county and district conventions (section 27).

The two most important of the seventeen amendments are: first, the provision for the rotation of the names of candidates on the primary ballot to avoid the advantage which Adams and Brown had over Young and Zeller under the alphabetical arrangement; and second, the provision for the filling of vacancies occurring after the conventions have been held but prior to the election.

It was the first of these provisions which most interested the candidates for office at the second trial of the law in June, 1910. Again there were many surprises and some disappointments, for the primary election returns show that in most cases where a candidate's name headed the list in the county or voting precinct he usually polled the most votes. The majority of voters are said to have voted for the first name on the list.

The Iowa primary law has been subjected to much more criticism after its second trial than before. After the first trial of the law the chief criticism came from those who had opposed its enactment, and they declared it to be a farce and a failure. Recent criticism is more specific, and the consideration of these criticisms constitutes the important part of my discussion of the working of the primary system in Iowa.

The old opponents still oppose the law—some of them demanding its immediate repeal. Democratic opinion seems to be somewhat divided on the subject. The Progressives have little to say besides deploring the apparent lack of interest on the part of the people. The *Des Moines Daily Capital*, Standpat, asserts that a careful reading of the press of Iowa will disclose sixteen criticisms of the primary to one of commendation, and challenges contradiction of the statement.

The chief criticisms directed against the Iowa primary election law after its second trial may be briefly summarized. In the first place the vote cast was light. In 1908 the opponents of the system decried the failure of the people to participate. To-day all parties complain of the light vote and apparent lack of interest on the part of the voters.

Estimating the Republican strength in Iowa by the vote cast for Taft electors in 1908 (275,209), the number of primary ballots cast for all three Republican candidates for Governor in 1908 was 93,346 less than those cast for presidential electors. In the primary for 1910, with only two Republican candidates in the field for the office of Governor and both of them well known, both having been candidates for that office in the first primary the Republican party polled 5000 votes less than in 1908 when there were three candidates in the field

In the primary of 1908 the Democratic party had but one candidate in the field for the office of Governor, and he polled 50,065 votes, while at the general election in November he received 196,929 votes, about 4000 votes less than were cast for Bryan electors. In the primary of 1910 the Democrats had three candidates for the office of Governor and the total Democratic vote cast for all three of them (46,982) was over 3000 less than the single candidate received in 1908.

Thus it is evident that the number of contestants does not necessarily influence the size of the vote cast. County and district contests, however, seem to have brought out more votes than the uncontested districts and counties. There were contests among the Republicans in the primary of 1910 in five of the eleven congressional districts, and more than half of the Republican vote of the State was cast in these five districts. Contests in the counties brought out a larger number of votes than in uncontested counties. For instance, a lively contest in Dubuque County for all elective offices on the Democratic ticket brought out 4178 Democratic votes at the primary. This was more than the Democratic party polled in the remainder of the third district where their normal strength is about 17,000 votes. Dubuque, however, is the only strongly Democratic county in the district and usually polls about 6500 Democratic votes. Taft electors received 4708 votes in Dubuque County; but as the Republican situation was hopeless there were no contests in the county and only 966 Republican votes were cast at the primary in 1910. Thus the Republicans polled but one-fifth of their vote.

Local contests sometimes seem to have overshadowed State or district contests. Thus the office of sheriff in Dubuque County received a third more votes than were cast for the office of Governor in the same county.

To explain the light vote seems to have been the task of every paper in the State from the country weekly to the city daily. These explanations are often colored with party bias or preëxisting prejudice. An examination of the returns, however, shows that the cities cast a fair proportion of their normal vote. The great slump came in the rural districts, scant notice being paid to primary day by the farmers of Iowa. They were much more concerned the first week in June in plowing their corn than in endorsing Dolliver and Cummins or in condemning the Taft administration. It has been suggested that June is the worst time of the year to get out the rural vote, and an

effort will undoubtedly be made in the General Assembly this winter to change the primary to a later date, probably September.

Another explanation for the light vote, which has been made a basis of criticism of the Iowa primary, is that the voters themselves are indifferent and disinterested. The party workers are as active as under the old system, but the people seem to care little which way things go.

The *Des Moines Register and Leader* the Progressive organ that stoutly defended the Iowa primary against its first critics, remarked editorially as follows after the recent primary:

> Many explanations can be given for the light vote, and are being given. But behind them all there is an evident disappointment that the Republicans of the State did not turn out and express their preferences. With politics a biennial affair it would seem that any important issue should bring the people to the polls. Certainly there was enough involved in the present campaign to justify a rousing primary. But the people have not responded. If in the future they prove equally indifferent a serious question will be raised as to the feasibility of direct popular appeal. Iowa will not abandon the direct primary but there will be much less dogmatic insistence on it than there has been.

Another serious charge against the primary method of choosing candidates is that most of those who vote do not do so intelligently. Iowa boasts of a very small per cent of illiteracy in proportion to her population, yet the public press of Iowa rings with the assertion that the majority of voters at the last Iowa primary did not vote intelligently. Some attribute this apparent unintelligent voting to a lack of knowledge of the candidates on the part of the voters. The primary election returns seem to justify the statement that

> in counties where a contestant's name appeared first on the ballot he invariably carried that county. If Carroll headed the list the Carroll voter voted almost in all cases for the head of the list for every other office, imagining they were Carroll men or vice versa.

No little amusement was occasioned by the finding that Senator Cosson, as candidate for the office of attorney general received the highest number of votes in Scott County where his name appeared first on the list. Senator Cosson is the author of several laws for the better regulation of the liquor traffic, which laws have been particularly distasteful to many people in Scott County. "Which is our

side?'' is said to have been the anxious inquiry of many a voter who had failed to acquaint himself with the candidates for nomination.

In the last primary campaign the issue between the two factions of the Republican party was clearly drawn on the endorsement of the administration of President Taft. The endorsement of the President meant the condemnation of our Insurgent Senators who had opposed the administration policy, declared the Progressives. The Standpatters succeeded in nominating their candidate for Governor. This was a personal victory for the candidate, but an empty honor as far as the Standpatters were concerned. The State convention called in accordance with the provisions of the primary law was Progressive by a large majority, and the Insurgent Senators made the chief speeches and wrote the platform, in which the national administration was dismissed with a statement of approval of those measures for reform which had been advocated by the President. No wonder that a leading Standpat editor exclaimed: "Another such victory and we are undone."

Some attribute these inconsistent results to unintelligent voting, but another explanation will be offered. A significant illustration of disinterested, if not unintelligent, voting is announced by the *Des Moines Capital*, namely; that candidates for offices in which there were no contests received continuing smaller votes, according to their position on the ticket. For instance, the candidate for Lieutenant Governor received more votes in most counties than did the candidate for Secretary of State, who followed on the ballot. The next office down the ballot was State Auditor, and he received less votes generally than did the Secretary of State. The State Treasurer followed the State Auditor, and his vote was less than that which the State Auditor received. The situation indicates that the voters in many instances voted simply for candidates when there was a contest, and then, if they started to mark down the ballot, quit, casting no vote for the candidates who had no contests.

It is further charged that the primary in Iowa is unrepresentative, because the mass of the voters did not appear at the polls, and because the test of party affiliation is not rigid enough to keep the minority parties from determining the nominations of the majority party. It is asserted that the minor parties, having practically made all of their nominations at a pre-primary caucus, may freely and aggressively participate in the primary election of the majority party if their consciences will permit them to do so.

Again in the selection of township officers complaint is made that two or three votes have often nominated important township officers. A man with two or three boys of age to vote for him may get a nomination and at the same time be a person non grata in the community which he represents.

Furthermore in the choosing of delegates to the county conventions the primary is declared to be unrepresentative. A few men it is said make up a list of delegates in advance for each voting precinct, print the names on gummed paper and send them out to the voters who vote the ticket straight, not knowing what the proposed delegates stand for. To be sure, it is answered that any other two or three men can put up opposing delegate tickets, and if none are put up no one ought to complain since some one must look after these things.

The cost of candidacy under the Iowa primary law is severely criticised by both parties. The *Dubuque Telegraph Herald*, a Democratic paper, demand stringent statutory regulation of expenditures by candidates, asserting that as much as $2000 had been spent in a single county by a contestant. A poor man, it is declared, can not afford to go into a contest with a man of means.

The *Washington* (Iowa) *Democrat* laments that it cost $1500 to determine which of two candidates should be nominated for sheriff, and that places on the Board of Supervisors involved expenditures of money far in excess of the salary attached.

"The man with the largest purse," says the *Waterloo Times-Tribune* "is most likely to get up the most enthusiasm and get most of the votes at the polls." "Judge Prouty," says the *Story City Herald*, "spent $5,000 in his primary campaign for the congressional nomination. This is one year's salary of a member of the House. If Prouty spent as much the other three times he ran, and it is pretty generally conceded that he did, he will have to remain in Congress four years in order to get his money back. . . . Prouty can afford to dig up the hard coin of the realm in order to get an office, but it looks as though the game of politics has progressed beyond the reach of the man whose purse is not so long."

The expense of the primary to the State is also criticised. The *Des Moines Daily Capital* asserts that the primary election cost ninety-six cents per ballot in Scott County. One dollar per ballot is frequently asserted to be the cost of the primary to the tax payers of Iowa.

"The present primary law" says the *Anita Tribune*, "is an expensive luxury which could be easily denied the people as a whole, and would be a saving of not less than a quarter million of dollars to the tax payers of the State during each biennial period."

Not many charges of open corruption are made against the operation of the Iowa primary, but that it has lent itself to "Boss" control is the repeated assertion of the Standpat press.

"Talk about the people making nominations," says the *Fairfield Ledger*, "why the politicians already control the machinery more than they did under the old caucus system, and they are only kindergartners in the business as yet."

The Iowa primary law is declared by some to be a failure because each faction goes back to the caucus idea. Two secret conferences are said to have taken the place of one public legalized caucus. That both parties have resorted to a pre-primary caucus is openly acknowledged, and the assertion is made that the primary law was all but ignored in the southern counties of the State.

The following are some miscellaneous press comments on the recent primary:

Genuine reform will come in at least one respect, when the primary ballot is finally wiped clean off the Statute books of the State.—*Anita Tribune.*

If there can be no improvement, if there can be no more interest, the old caucus-convention method is more representative.—*Waterloo Times-Tribune.*

"At the time the primary law was passed," says the *Des Moines Capital*, "we made the prediction that two years would find the law thoroughly discredited."

The Primary election has lost almost completely whatever favor it ever held. The complaints against it are too numerous to mention. —*Toledo Chronicle.*

We believe the people are tired of the primary law.—*Arlington News.*

Among all of these condemnations of the Iowa primary law, what strikes the reader most is the almost total absence of suggestions for reform, most of the opposition apparently being content to return to the old caucus-convention system.

The *Dubuque Telegraph-Herald* declared immediately after the primary last June that the Short Ballot must be adopted to make the direct primary a success. And the *Des Moines Register and Leader*

in its issue of December 12, 1910, seems to be the most recent convert of that idea.

The only reform suggestion emanating from the Standpat press that I have found calls for a strict registration of Democrats and Republicans sixty days before the primary, and that counties should be authorized to hold conventions submitting two names for each office to be filled, then have the people in a primary election choose between these double sets of names presented by the conventions.

As a means of encouraging participation in the primary the chief progressive organ declares that there is much to say in favor of remitting the poll tax of all who vote at the primary and general elections.

In conclusion, then, it seems to me that the Iowa primary law has been judged and criticized too much from the standpoint of political results instead of from the viewpoint of the opportunity which it presents. The old method was certainly open to all of the criticisms and objections that have been directed against the Iowa primary election law. The new system has not destroyed the party, but it has overthrown some of the old party practices.

The Iowa primary must be looked upon as an opportunity of Democracy, which is still in the experimental stage. To be sure it will require considerable revision and amendment, but it must be remembered that the old caucus-convention system was not a mushroom growth.

I do not believe that the people of Iowa are disposed to give up the primary election system. Nevertheless the advocates of the direct primary must concern themselves more with educating the people in the spirit of the law than in immediate success at the polls.

THE DIRECT PRIMARY MOVEMENT IN NEW YORK

BY CHARLES A. BEARD

Columbia University

The statewide direct primary became an issue of New York politics in 1909. But it was not because any considerable portion of the voters of the Empire State had been captured by the advancing doctrines of direct government. As in other States, apparently, the direct primary was forced to the front by the attempts of a group within one of the dominant parties to secure possession of the regular party machinery. Just as the convention was used by Jackson's belligerent followers to destroy the caucus system then in the full control of the old office-holding aristocracy, so the direct primary is employed in capturing old intrenchments. It has its great moral and philosophical justification, of course, but it is brought to play in the practical game of politics only when some decidedly strategic points can be captured by no other process.

To speak more concretely, the direct primary was carried forward in New York politics when the insurgent forces in the Republican party felt that there was no other way of capturing the established organization which had been discredited by the insurance investigation, the legislative scandals, and other serious exposures during the first years of the new century. It is true that the Citizens Union, the leading civic organization of New York City, had, from time to time, proposed direct nominations at Albany, and independent reformers had done the same thing on their own account, but it was not until 1909 that Governor Hughes recommended a statewide direct primary and took positive steps toward the formation of a definite legislative measure embodying his ideas.

From the beginning of his administration, however, he had been preparing the way for this move. Indeed, his election, at a time when the rest of the ticket—popularly called a "bosses' slate"—went down to defeat, was regarded in some quarters as the repudiation of the "Old Guard" Republican organization. Many dissatisfied Repub-

licans began to see in Mr. Hughes a new leader who was to drive the money changers out of the temple.

How far Mr. Hughes was at first conscious of the actual division in his party which later manifested itself very definitely at the Saratoga Convention in 1910, is, of course, a matter for conjecture. It is likewise impossible to say to what extent he viewed the direct primary as an instrument to be used by the discontented elements in their assault on the regular organization. However, in his first message, January 2, 1907, he recommended "that an amendment [to the primary law] be passed providing with sufficient clearness that any general committee of a party may adopt a rule providing for direct nominations, and that thereupon voting at the primary shall be upon an official ballot, printed at the public expense. It is probable that under an unambiguous law of this kind the method will be adopted in one or more important counties, and there will thus be furnished a satisfactory test of the desirability of having a system of nominations by direct primary vote. Our own experience will then enable us to determine the wisdom of its extension."

He came back to the subject again in his message of January 1, 1908, and there was a slight note of battle in the paragraphs on direct nominations:

> The urgent need for primary reform is generally recognized. There is wide difference between effective organization in the interest of the party and the misuse of such organization for purely selfish purposes. Within itself the party consittutes a democracy, and its members should be protected against despotic proceedings.
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> To prevent frauds provision should be made for an official primary ballot. But the form of the ballot should put all the enrolled voters upon an even footing, without any advantage to those who are in power for the time being and should encourage discrimination in the selection of representatives.
>
> There should be unrestricted opportunity for the expression of the wishes of the members of the party in the selection of candidates for office. Only in this way can healthy party activity be secured. And in order that the enrolled voters should be encouraged to take part in party proceedings, and that the will of the party in the choice of candidates may be expressed, and not defeated by a perversion of party machinery, I am in favor of direct nominations.
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> I renew the recommendation made at the last session that provision should be made for such nominations, at the primary, of candidates for office. In my judgment it is advisable that the provision should take the permissive form; that a method of direct nominations shall be defined which party organizations may adopt by suitable

rule. I favor this course because I believed that in this manner legislation can be had which will secure a fair trial of the plan and pave the way for its general adoption in the light of persuasive experience.

A direct nominations bill which was said to have received the general approval of Mr. Hughes was introduced in the legislature (1908) by Senator Travis and Assemblyman Green. No direct vote on the bill was taken, in either House but a motion in the Assembly to discharge the Judiciary Committee from further consideration of the bill was defeated by an overwhelming majority. The Travis-Green bill was again brought up at the extra session of the legislature held in the summer of 1908, and was passed by the Senate but defeated in the Assembly. At that time Governor Hughes was too busy with the race track gambling legislation to devote much attention to the new issue.

It became quite apparent in the campaign for re-election in the Autumn that Mr. Hughes was not in entire harmony with the constituted leaders of his party. Indeed, acute observers early remarked that Mr. Hughes had been renominated by the Organization only because of the popular pressure that had been brought to bear from every direction. The breach in the Republican ranks soon became so wide that it was an issue in the campaign, and Mr. Hughes quite naturally regarded his re-election as an endorsement of the legislative policies which he had been advocating.

In his message of 1909 he took an uncompromising stand for a statewide direct primary law:

One of the most striking developments of recent years is the rapid growth of the demand for improved methods of nominating candidates for public office. It is a late phase of the long struggle against the control of the powers of government by selfish interests. Methods which make easy this control are doomed, for the people will not be content with the mere forms of self government.

There has been a notable progress in perfecting our electoral machinery and in the reduction of opportunities for corruption in connection with elections. But the part played by political parties in nominating candidates makes it necessary to regulate the nominating machinery as well, if the public interest is to be properly protected. As our citizens in general make their choice between the candidates offered by the opposing parties, we must ultimately depend for truly representative government upon the selection of these candidates in accordance with the wishes of the members of the respective parties.

This is recognized in theory and denied in practice. In theory party candidates are selected by those who have been chosen by the party voters to represent them in conventions. In practice the delegates to nominating conventions are generally mere pieces on the political chess board and most of them might as well be inanimate so far as their effective participation in the choice of candidates is concerned. Party candidates are in effect generally appointed, and by those who have not been invested with any such appointing power.

This practice is attended with serious consequences. It has a disastrous effect upon party leadership. The power of selecting candidates is so important that there is a constant temptation to protect it by such manipulations of the party machinery as will make it serve individual interests. Party principles and the essentials of successful administration of office are too largely subordinated to the necessities of political leaders and their retention of control. The fine service of party loyalty is prostituted to the base uses of those who make the maintenance of their individual power paramount to true party interests. And the just strength and dignity of party leadership often fails by reason of public contempt for methods frequently used to secure support for its counterfeit. Real leadership of ability and force of character suffers from such methods and would largely gain by increasing the difficulty of their pursuit.

The present system tends to discourage participation by the party voters in the affairs of the party. Entrenched power is so strong and the influence upon the choice of the party candidates is so remote that it requires an unusual situation to call forth the activities of the party members to the extent desirable.

The candidates selected by the present method too often and not unnaturally regard themselves as primarily accountable, not to their constituents nor even, broadly speaking, to their party, but to those individuals to whom they feel they owe their offices and upon the continuance of whose good will they deem their political future to depend.

But the most serious consequence is to the people at large. To the extent that party machinery can be dominated by the few the opportunity for special interests which desire to control the administration of government, to shape the laws, to prevent the passage of laws, or to break the laws with impunity, is increased. These interests are ever at work stealthily and persistently endeavoring to pervert the government to the service of their own ends. All that is worst in our public life finds its readiest means of access to power through the control of the nominating machinery of parties. Party organization needs constantly to defend itself from these encroachments, and the people for their proper security must see that the defenses are built as strongly as possible.

There have been and are conspicuous illustrations of party leadership won and held in opposition to those who have represented special interests, and endeavoring faithfully and honorably to perform its

proper function. But this does not alter the fact that our present method facilitates the control of government by those whose purposes are antagonistic to the public welfare. Nor should we be unmindful of the extent to which the force of enlightened public sentiment in indirect ways mitigates the evils inherent in our present system. But this sentiment works under conspicuous disadvantages, and it is a defect in our system requiring remedy that the actual power of nomination should reside with those who are under strong temptation to disregard the public interest in favor of private advantage so far as that course may be deemed to be safe.

When we inquire what remedy is available, it may be said that there is none which can be considered as complete, because human nature cannot be changed by legislation and opportunities for political mischief will exist under any system. But we may make improvement and these opportunities may be diminished. We should perfect our primary laws by providing for an official primary ballot, by extending our enrollment system and by placing our primary elections under substantially the same restrictions as our own general elections.

But we should go beyond this. As the evil so largely resides in the perversion of representation we should further proceed along the line of progress by restoring effectively to the many the powers which properly belong to them and have been usurped by the few. What history has shown to be essential to the protection of the people is likewise needed for the protection of parties, and thus ultimately for the reënforcement of public rights. We have decided not to trust despotism, though occasionally it may be benevolent, nor do we favor government by aristocracy. Experience has shown that the people can be better trusted than their self-constituted guardians.

The rule of the people involves vigorous discussion and popular contests, but we are finally committed to it because in the long run our safety depends upon it.

If we apply these principles to our party activities we shall make them the more wholesome, as they will more readily respond to the intelligent and conscientious purposes of the party members.

The time has come, I believe, when nominations by all parties for elective offices should be made directly by the enrolled voters of the parties respectively. This will promote true party representation. It will tend to strengthen and dignify party leadership by making it less susceptible to misuse and more in accord with general party sentiment. By increasing the direct influence of the party voters their participation in party affairs will be encouraged. It will make the elective officer more independent of those who would control his action for their selfish advantage, and enable him to appeal more directly to his constituency upon the basis of faithful service. It cannot fail in the main to prove a strong barrier against the efforts of those who seek, by determining the selection of candidates, to pervert administration to the service of privilege or to secure immun-

ity for law-breaking. It is a reform which is instinct with the spirit of our institutions, and it is difficult, to see how any party man, however, earnest in his partisanship, can oppose the right of the voters of the party really to decide who shall represent them as candidates.

The object of our primary legislation has been said by the Court of Appeals to be 'to permit the voters to construct the organization from the bottom upwards, instead of permitting leaders to construct it from the top downwards.' This is not only important with regard to offices in the organization, but the object cannot be effected so long as nominations may be dictated and the power to make them does not actually reside with the party voters.

I therefore recommend a system of direct nominations by all parties for all elective offices, other than those of presidential electors, filled at the November election or at special elections called to fill vacancies in such offices. Heretofore I have suggested that it be made permissive, because it was believed that such a provision would rapidly lead to its general extension. But the objections urged to this course and the strength which the movement for direct nominations has gathered have produced the conviction that we should decide upon a policy binding upon all parties. In this State the way has been prepared by the method of party enrollment now in use in portions of the State and by our familiarity with provisions designed to prevent corrupt practices and frauds at elections.

Shortly after the publication of his message, Mr. Hughes outlined his own plan for direct nominations in a speech delivered in Brooklyn before the Young Men's Republican Club. Some members of this club, acting, doubtless, on the suggestion made in the Governor's speech, drafted a measure for introduction in the legislature. This measure contained, however, some features which were not acceptable either to Mr. Hughes or to the up-State Republicans interested in direct nominations. Accordingly, a group of direct primary advocates, including some representatives of the Young Men's Republican Club, drafted a new bill embodying all of the fundamental ideas which had been advocated by Mr. Hughes—especially the scheme for allowing a duly constituted party committee to designate candidates for nomination to the several offices.[1] This bill was introduced in the Assembly by Mr. Green of Kings County, and in the Senate by Mr. Hinman of Broome. It was strongly supported by the Republican followers of Mr. Hughes, and was severely attacked by his opponents in both parties. While a few of Mr. Hughes' friends criticised the bill

[1] This system is fully described in an article by Mr. Arthur C. Ludington, *Political Science Review* for August, 1909.

in principle, it was commonly understood that a fight had been begun between the Organization and the Hughes elements in the Republican party. The victory for the time being lay with the former, for the Hinman-Green bill was sadly defeated in both Houses by the adoption of the adverse reports made by the Judiciary Committees to which the Bill had been submitted.

The legislature, however, did not treat the direct primary as a wholly dead issue, for by concurrent resolution, adopted on April 29, 1909, a joint committee of the Senate and Assembly was created, and directed

to examine into, consider and investigate the operation, efficiency and results of the so-called direct primary law for the nomination of candidates for elective offices in other States of the United States as well as the laws of this State regulating the conduct of party primaries and conventions, and, generally, into all matters pertaining to the election laws, for the purpose of determining what amendments, if any, to the present laws of laws governing primaries and elections are needed, the same, or what other further legislation may be needed upon the subject, and to report its recommendations to the Legislature on or before the first day of February, nineteen hundred and ten, together with proper and necessary bills to carry into effect its recommendations if such recommendations require it.

This committee, headed by Mr. Meade from the Senate and Mr. Phillips from the Assembly, was composed of strong opponents to direct nominations, but it sought to bring out in its hearings both sides of the question, although there is no doubt that emphasis was laid upon the shortcomings of the new system. Sessions were held during the summer and autumn in Boston, Philadelphia, Harrisburg, Pittsburgh, Topeka, Des Moines, Saint Paul, Madison, Milwaukee, Chicago, Indianapolis, Detroit, Buffalo, and New York City. The stenographic report of the testimony taken by the Commission was not printed, but a digest of the evidence was laid before the Legislature in February, 1910, under the title, *Report of the Joint Committee of the Senate and Assembly of the State of New York, appointed to Investigate Primary and Election Laws of this and other States.*

As had been expected, the report of the committee was decidedly adverse to direct nominations. The committee claimed that the direct nomination schemes were still in an experimental stage and that there was a wide diversity of opinion among wise and patriotic citizens as to their desirability as a means of selecting candidates for elective offices.

The committee proposed to meet the demand for primary reform by a series of provisions including a uniform primary day throughout the State, state-wide enrollment of party voters, an official primary ballot for each party printed at public expense, the election of party, town, county and ward, committeemen by direct vote at the primary, the abolition of intermediate conventions for electing delegates to other conventions, the establishment of vote by roll-call in conventions, and the "Short Ballot."

The report of the committee had slight weight with the advocates of direct nominations on account of the fact that it was esteemed to be an ex-parte document, and Governor Hughes in his message to the Legislature on January 5, 1910 showed that he was more firmly than ever convinced of the desirability of the new system. He said:

In my message last year I stated the reasons which have led me to favor the adoption of a system by which party candidates for elective offices shall be nominated directly by the party voters. It is unnecessary to repeat them. They are based upon facts commonly known and upon the existence of evils which arguments cannot explain away and to the continuance of which the people remain unreconciled. The ordinary party member, who cannot make politics a vocation, feels that he is practically helpless, a victim of a system of indirect, complicated and pseudo-representative activities which favor control by a few and make party candidates to a great extent the virtual appointees of party managers. Party voters are largely out of sympathy with their party organization because they believe that its powers are abused and its purposes perverted.

Favoritism in departments of administration, the nonuse or misuse of supervisory powers, and the shaping or defeat of legislation to protect particular concerns or interests—in short, the degree of success which has attended the efforts of those who have not been entrusted with governmental authority to dominate the action of public officers and to place and keep in power those who will be amenable to their control—may be traced in large measure to the methods which have been in vogue in making party nominations. Through these abuses not only has the general public suffered, but parties themselves have had their efficiency impaired. And even those who have sought ably and honestly to direct party affairs, have, to some extent, been involved in the disrepute which has followed upon the manipulations of the unscrupulous. A system which favors autocracy in party government is opposed to every proper interest.

Against the proposed change has been urged the familiar argument that human nature cannot be altered. But the present system is not an essential part of human nature. Our keen appreciation of the failings, weaknesses and temptations which must always be conspicuous in human activity should not cause us to yield to the counsel of

despair, but should rather stimulate the effort to make every possible improvement in the methods of political action. The fact that human nature cannot be changed is no reason why we should not provide safe-guards against the play of its infirmities.

It should also be observed that while in considering remedies we should avail ourselves of all pertinent information and experiment, we must ultimately deal with the facts of our own experience. Variant conditions in the different States may be useful for the purposes of our general history but can afford slight help in the solution of our own problems. Arguments derived from opinions which are addressed to a different state of facts or to measures not analagous are of slight value.

There is no matter of graver public concern than the methods of party action. Our officers of government are usually those selected by one or the other of the two great national parties. The Constitution of the State expressly recognizes political parties and confides in equal representation, to such parties as cast the highest and next highest number of votes at general elections the discharge of the important public duty of registering voters, distributing ballots to voters at the polls and of receiving, recording and counting the votes of electors. Political parties which enjoy these privileges and opportunities cannot justly be regarded as mere associations whose methods and transactions lie outside the domain of reasonable and impartial regulation in the public interests. It is of the highest consequence to the party voters and to the public at large that so far as possible there should be protection against abuses in the conduct of party affairs.

There must be party committees and those who take charge of the management of campaigns, and are entrusted with the supervision of party administration. But the method of their selection should provide proper checks upon efforts to defeat the wishes of the party voters or to perpetuate their power by using the party machinery for their own advantage. Members of party committees should take and hold title to their offices through the direct choice of the party voters to whom they should be directly accountable. . . .

I also renew the recommendation that a system of direct nominations by all parties for all elective offices, other than those of presidential electors, filled at the November election or at special elections called to fill vacancies in such offices, be provided.

Primary elections should not only be safeguarded, but they should accomplish their purpose, and that is to make the participation of the voters effective and their wishes decisive in the selection of those who are to hold party positions and of party candidates for office. The party voters can act more intelligently in the direct choice of candidates than in the choice of delegates. The former are publicly discussed their qualifications are analyzed; the genesis of their candidacies is considered; and the public opinion of the respective districts may be ascertained. Delegates at the best are uncertain, and public atten-

tion cannot be riveted upon them to the same degree. If they are absolutely pledged they are simply registering devices and an unnecessary and a cumbersome addition to the party machinery. If they are not pledged absolutely the party voter has no proper assurance either of their allegiance or of their deliberation. They lend themselves easily to secret control by party managers and furnish the means not for true representation, but for nonrepresentation, or misrepresentation of the party. It is not difficult to provide, and provision should be made, for all necessary consultation and recommendations by party leaders. But they do not constitute the party and their recommendations, which should be made in a responsible and public manner, as well as other proposals of candidacies should be subject to the final decision of the party voters.

It is no more complicated or expensive to have a primary election, under due protection and with an official ballot, at which the party nominees shall be directly chosen, than to have a similar election of delegates. There are no greater opportunities for fraudulent practices in the former case than in the latter, nor as many. It is difficult to interest the people in intermediaries, and general participation of the voters in the primaries is conditioned upon their appreciation of the fact that they accomplish something by such participation. If it be desired to have the form without the substance, to have representatives who as a rule do not represent and those chosen for deliberation who usually do not deliberate, and to transfer the absolute decision to party leaders with the alternative to the party voter of bolting his ticket and meeting the reproach of party disloyalty, the present system may be defended. But if it be desired to have true party representation and that the party members should express decisively their wishes, this may be accomplished through a direct vote.

Following the recommendations of Governor Hughes, the Hinman-Green bill was again introduced in the legislature with the modification that the system of designation by committees should be regarded as optional and not mandatory.

At the instance of the committee appointed to investigate direct nominations, another primary measure, bearing the names of the chairman and vice-chairman, Mr. Meade and Mr. Phillips, was introduced in the legislature. This bill embodied the principles laid down by the committee in its report, and left the convention system undisturbed. In a special message Governor Hughes declared that the bill was "not a grant but a denial of needed primary reform."

A third primary law, introduced by Mr. Grady in the Senate and Mr. Frisbie in the Assembly representing the Democratic League, provided for the nomination of certain candidates by direct vote, but exempted New York City from the operation of the law.

A fourth primary bill was introduced in the Senate at the instance of Mr. Cobb shortly after his election to majority leadership on the unhappy downfall of Mr. Allds. This bill, brought forward by the Senate Judiciary Committee, was a compromise measure, and provided for the direct nomination of candidates for the State legislature, county offices and the House of Representatives. It furthermore exempted the county officers of New York City from the operation of the law in the years in which mayoralty elections were held.

None of these bills, however, became a law at the regular session of the legislature (1910), and Governor Hughes to force the issue called a special session for the purpose of compelling a straight forward consideration of the question of direct nominations. At this special session every effort was made to bring the friends of direct nominations together, and the Cobb bill, with slight modification, was introduced in the legislature as a compromise measure. The supporters of Governor Hughes wheeled all their forces into line, and Mr. Roosevelt publicly called upon the members of his party to aid in the passage of the measure. In spite of all the powerful influences that could be brought to bear, the special session adjourned without enacting any direct primary legislation.

It was perfectly evident, even to casual observers, that the defeat of the new proposal was due to a bi-partisan combination of Republican and Democratic organization leaders. Accordingly, the advocates of the direct primary in both parties set vigorously about the task of committing their respective state conventions to the new cause. As a result, both of the old parties accepted the principle of direct nominations in some form. The Republican convention declared as follows:

> To Governor Hughes is due the credit of arousing the interest of the people and convincing them of the need of directly electing their party officers and directly nominating their party candidates. We promise legislation which will enact these principles into law.

The Democratic convention came out even more emphatically:

> We declare in favor of state-wide direct primaries to ensure to the people the right to choose members of political committees and nominate candidates for public office.

The election of November, 1910, gave the victory to the Democrats and the government of the commonwealth is now in the hands

of a party definitely committed to a system of state-wide direct primaries. So things stand at the beginning of the year 1911.[2]

[2] In his message to the legislature, January 4, 1911, Governor Dix said: "I strongly recommend to you a revision of the election and primary laws of the State, so as to provide for a system of direct nominations—state-wide in its application—which shall insure to the people the right to choose members of political committees and nominate candidates for public office. The more completely the people are brought into close touch with these most important matters, and the more they can be induced to take part in their party primaries, the stronger and more healthy will be the atmosphere of public confidence surrounding party nominations, and the more likely the vast majority of our citizens to exercise the right of suffrage on election day."

A FEW CONSIDERATIONS ON THE SETTLEMENT OF INTERNATIONAL DISPUTES BY MEANS OTHER THAN WAR

BY THEODORE MARBURG

Baltimore, Md.

The success of international arbitrations—between 250 and 260 since 1815—and the present frequency of them, combined with the growing consciousness of the economic waste involved in war and in preparation for war, have projected into the field of practical politics the question of a settlement of international disputes by means other than war. The possibility of avoiding war by entering into treaties of arbitration after the dispute has arisen and after diplomacy has failed to adjust the dispute is no longer relied upon as the sole means of averting a resort to force. Coming into being with the First Hague Conference (1899), the Permanent Court of Arbitration at the Hague, which sets up a list of judges from which an arbitration tribunal may be drawn, marked a distinct forward step. Its very existence has not only invited the nations to use arbitration as a means of settling present disputes but has promoted the making of so-called general treaties looking forward to the submission of a certain category of future disputes to arbitration. From May 18, 1899, to March 21, 1910, there were negotiated 133 such treaties. The First Hague Conference likewise set up the Commission of Inquiry, which provides machinery for ascertaining the facts, and in one notable instance at least—the Dogger Bank affair (1904)—has justified its existence.

Another device for abating strife between nations is neutralization. It has been applied to Switzerland, (1815), Belgium (1832) and Luxemburg (1839) long enough to prove its value. The fact that certain great powers stood ready to forbid any violation of the independence or territorial integrity of these states has certainly acted as an effective deterrent to powerful neighbors who might have had an ambition to commit acts of aggression against them. The world is probably destined to see a great extension of this principle not only with regard to small independent powers but possibly with regard

to certain areas or possessions of some of the great powers. But the principle is not capable of universal application. It must be used with discrimination. The progress of the world may be retarded by the neutralization of countries where backward conditions prevail. It may be well to lay down some such principle as this, *e.g.*, that neutralization is applicable with advantage only to countries which have fairly just laws administered with some approximation to justice, an underlying qualification which in fact applies with equal force to permanently successful protectorates for the reason that a protectorate in which there is a constant failure of justice must eventually either be left to be disciplined by foreign powers, the personal or property rights of whose citizens are violated, or must be entered and directly administered by the power which has set up the protectorate.

But extension of the principle of neutralization is necessarily slow and subject to serious limitations; arbitration and actual adjudication are capable of much more general application as a means of avoiding international strife. Arbitration itself has its limitations, arising chiefly from the fact that its governing principle is compromise, and it is because of this that we witness the growing movement for the establishment of a true international court of justice. The establishment of such a court, governed by the principle of res adjudicata, it is felt, would preserve peace between nations more stoutly than any other single institution thus far existing or suggested. Not only would its operation at once begin to create authorative international law in the form of judge-made law, but its very existence would invite the codification of international law and the formal adoption of such law by the nations, just as the Prize Court, adopted by the Second Hague Conference, led to the London Conference (1908-09) which codified the law of prize.

The criticism has been made that the awards of courts of arbitration have been so generally accepted because burning questions have not been submitted to arbitration; that wars which have actually occurred were over differences too serious for peaceable adjustment. There is much force in this criticism, but impartial analyses of past wars by more than one writer show that the criticism is far too sweeping. Moreover, nations which hesitiate to enter a court of arbitration because they regard the interests at stake as too important to subject to the risk of compromise, will be more willing to abide the decision of a true court of justice which shall be governed by estab-

lished international practice, or, in its absence, will at least apply the general principles of justice.

A common source of strife and of the extension of empire in the past has been the demand for protection against violence by the citizen who has gone out from the home country and settled abroad. The persistent repetition of such wrongs has often resulted in the actual extension of foreign dominion over the lawless country. Now, imagine the international court of justice to have come into being. Take the hypothetical case of repeated acts of violence, directed against against our own citizens residing abroad, to all protests concerning which acts, and demand for reparation, a deaf ear is turned. We do not, I take it, want to extend our dominion. But we do insist that our citizens shall enjoy the equal protection of the law no matter where they reside. Diplomacy having exhausted its efforts, the demand for reparation and for the cessation of such acts would, under the new régime, be submitted to the international court of justice. If its findings and its injunction against a repetition of such acts were ignored, the lawless country, instead of being disciplined and possibly occupied by us, would then be policed by an international force—just as Morocco, the Bering Sea and the North Sea are policed to-day—until such country showed itself capable of reëstablishing law and order.

The extension of foreign dominion over such countries has been regarded in the past as among the great inevitable forward movements of a race. When analyzed, it will be found that these and similar cases equally aggravating could be dealt with successfully by an international court backed up by temporary international police or actual, though temporary, international administration. As to the more progressive nations, except where the intent of a country is conquest, there are but few possible causes of friction between them, which, when examined, will not be found susceptible of adjustment by a world's court.

IS SUFFICIENT TIME DEVOTED TO THE STUDY OF GOVERNMENT IN OUR COLLEGES?

A REPORT SUBMITTED BY CHARLES G. HAINES

Whitman College

A few years ago a committee was appointed by the American Political Science Association to investigate the teaching of American Government in the secondary schools of the United States. The circular letter sent out by this committee contains the following observation:

> Is it not a curious fact that though our schools are largely instituted and operated by the government, yet the study of American government in the schools and colleges is the last subject to receive adequate attention? The results of the neglect of this important branch of study in our educational institutions can easily be seen in the general unfitness of men who have entered a political career, so that now the name of statesman is often used as a term of reproach, and the public service is weak, except in a few conspicuous instances. Are the schools perhaps to blame for the lack of interest in politics shown by our educated men until recent exposures arrested the attention of the entire nation?
>
> We think the best place to begin the work of regeneration and reform is in the American secondary schools and colleges. Here we find the judges, legislators, diplomats, politicians and office-seekers of the future in the making. Here are the future citizens, too, in their most impressionable years, in the years when the teacher has their attention.[1]

The committee found as a result of the investigation then instituted that only from 17 to 20 out of 100 students in the high schools take American Government and that according to indications the percentage was decreasing. Large cities were found where American government was not taught at all in the high schools. It was found that the amount of energy put forth to comprehend the language of the ancient Romans was about three times the total amount devoted

[1] *Proceedings of the American Political Science Association*, vol. v, p. 221.

to the comprehension of our vast and very intricate governmental and party machinery. It seemed very singular to the committee, "that in our high schools where the most fortunate tenth or twentieth of our youth is being educated at public expense, the subject of government should receive so little attention and be among the poorest taught in the entire curriculum."[2] It was a question in the opinion of the committee whether it is more important that the future American citizen should be able to translate the language of the ancient Romans and talk learnedly of ephors, areopagus, praetors and consuls than that he should know how our candidates are nominated, how our citizens are governed, how our senators are elected, how our juries are drawn, and how our national and state courts are constituted.

Believing that the inadequate amount of time devoted to the study of government in the secondary schools and the very unsatisfactory character of the instruction is due, at least in part, to a failure to place sufficient emphasis upon this subject in American colleges, the writer was led to a comparative study of the courses offered in Political Science and Government in a selected list of colleges of the United States. The catalogues of more than sixty institutions were examined. In the preparation of data, however, the older universities of the East and the large state universities of the Middle West, and the colleges and universities of the South were not included—the former on account of the fact that their departments were too extensive and too highly specialized to be used in making comparisons, and the latter because of the undeveloped condition of this department of work. Forty institutions were finally chosen as a basis for comparative study.[3]

Although this is a small portion of the total number of colleges in the country it is believed that the list is representative enough to

[2] Op. cit. p. 226.

[3] In all but a few instances the catalogues for year ending June, 1910, were used. The catalogues of the following institutions were selected in preparing data: Amherst, Bowdoin, Bryn Mawr, Clark, Colorado, Dartmouth, Dickinson, Grinnell, Haverford, Knox, Lehigh University, Oberlin, Ohio Wesleyan, Olivet, Pennsylvania State, Rutgers, Smith, Swarthmore, Trinity, Tufts, Union, Ursinus, Vassar, Wesleyan University, Williams, Whitman, and the Universities of Colorado, Idaho, Kansas, Montana, North Dakota, Oklahoma, Oregon, South Dakota, Southern California, Texas, Utah, Vermont, Washington, Wyoming.

form a fairly accurate estimate of the time devoted to the study of government in our higher institutions. The major portion of the list is comprised of the large and richly endowed colleges of the United States and the liberal arts department of twelve state universities. As the number of courses offered in the state universities is frequently larger than the number of those offered in the private institutions of the East and as the institutions of the South are not included it may fairly be concluded that the general averages secured are more favorable to the subject of government than would be the case if statistics were gathered from a much larger number of colleges and universities from all sections of the United States.

History

	PER CENT*	HOURS†
Ancient	50	53
Mediaeval	87.5	107¼
Modern European	87.5	126½
American	97.5	170½
English	87.5	106

Political Science and Government

	PER CENT	HOURS
Political Science or Comparative Government	72.5	55
American Government	50.2	38
American Politics	17.2	8
Political Theories	30	18½
American Constitutional History	20	14
English Constitutional History	10	5½
Municipal Government	45	24½
American Diplomacy	15	10

Law.

	PER CENT	HOURS
American Constitutional	35	24½
Elementary Law and Jurisprudence	32.5	26
International	42.5	29½
Commercial	17.5	12

*Percentage of institutions offering course.
†A unit hour—one hour per week throughout the year.

Economics

	PER CENT	HOURS
Elements	95	91
Public Finance	80	60½
Money and Banking	70	52½
Economic Theory	42.5	35
Economic History	72.5	72
Labor Organizations	57.5	43½
Trusts and Industrial Combinations	42.5	42
Transportation	55	40
Statistics	20	8½

Sociology

	PER CENT	HOURS
Elements	32.5	41
Advanced Sociology	20	17½
Charities	22.5	16
Socialism	17.5	11
Social Psychology	10	9½

Information from catalogues is sometimes indefinite and not always reliable enough to form a very accurate basis for statistical results. All that can be claimed for the data gathered is that general tendencies are rather clearly shown and a fair estimate can be formed of the amount of time given to the study of government in the colleges of the country.

It will be seen from the above table that only 50.2 per cent of the list of colleges chosen offer courses in American Government. Including the number of hours devoted to American Politics only 46 hours per year are given altogether to the study of our governmental system in these forty institutions of the country. The time devoted to American Constitutional History and Constitutional Law and in some cases to American History may be claimed, as given, in part at least, to American Government. After making allowance for the emphasis upon government in the study of history the total time allowed to this subject is very small indeed in comparison with other related subjects. For example, fully as much time is given to the study of the governments of ancient Greece and Rome as to our own system. In fact, if the courses offered in the department of Classics

were added the preponderance would be distinctly in favor of the ancient governmental systems. Practically as much time is given to the study of the intricate and rather special problems of transportation as to separate courses in American Government. Such subjects as labor problems and trust problems have a larger total than American Government.

Another interesting feature of the data secured is the fact that only 26 hours are allotted to the Elements of Law and Jurisprudence in the 40 institutions selected. A few more than two-thirds of these institutions offer no course at all in Elementary Law. If the total number of hours given to Political Science, Government and Law be divided by the total number of institutions, it is found that less than 7 hour per week for each institution are devoted to the field which aims to give our students a definite knowledge of our governmental and legal system, in its origin, development and practical working. Fully one-half of this total of 7 hours deals with the historical development of our institutions and with political theory, leaving less than 4 hours per week throughout the year for an analysis of the governmental organization at the present time and to the study of practical problems of modern politics. One hour weekly is the average time given in each of the 40 institutions to the definite study of American Government. When it is recognized that a large portion of the total number of hours is to be found in a few well-organized and well-endowed institutions and the state universities, the actual time devoted to this field in the majority of the colleges of the country appears to be exceedingly small.

An analysis of the courses offered according to college catalogues gives no indication in regard to the number of students enrolled in the classes in Political Science, Government and Law. As these courses are very rarely required and are elected as a rule mainly by those majoring in the department, it is safe to presume that only a small percentage of those graduating from college get any training in this field. If the figures secured from the enrollment of classes in three of these institutions may be taken as typical, from 80 to 90 per cent of the students graduating from our institutions leave college without any special training for citizenship or for the assumption of leadership in matters relating to law, government and politics.

The above data and the observations which may be drawn therefrom are not intended to be either very accurate or very conclusive. They are offered primarily to show the need of further investigation

and the absolute necessity of a better development of work along these lines in American colleges.

It is generally recognized that in no other country of the world is the citizen and voter called upon to do so much as in the United States. In the adoption of constitutions, in the election of hosts of public officials, in determining the great policies of national and state governments our voters are constantly called upon to decide an increasing number of political issues. As these issues have grown in number and importance they have also grown in complexity. The adoption of the initiative, referendum and recall and the enactment of extremely elaborate state constitutions are imposing heavier and heavier burdens upon the electorate.

In like manner our country has been foremost in placing emphasis upon education as the prime requisite for the development of good citizenship. Our public school leaders and those in charge of the curricula of our higher institutions have in theory at least claimed that intelligent citizenship is one of the aims constantly kept in view. Is it not strange, then, that so little time, thought and energy are given to the study of the field of American Government and Politics in our secondary schools and colleges? And how does it happen that in in the instruction offered such a small percentage are actually enrolled? Can a nation whose government is constructed on the principle that the people shall rule afford to devote from three to four times as much energy upon the study of the classic languages, making them the basis of the superstructure of higher education, and fail to find time or opportunity to present the principles and practices of its own governmental system except to a small minority of those who benefit by our higher educational institutions?

It is certainly significant that the majority of the great movements for good government and progressive changes in government, such as the application of business principles to American municipalities through bureaus of municipal research and the fruitful developments in the field of comparative legislation in legislative reference libraries, have originated with private individuals and associations and have only been tardily recognized and sanctioned by our higher institutions. Is it not probable that one of the causes which have led to so much unscientific legislation in relation to money and industry in the United States is the inherent distrust of the expert fostered in the minds of those who have had little or no opportunity to master the first principles of subjects with which they are obliged to deal?

The actual status of courses offered in law and the opportunity for instruction in this subject is also a matter for serious reflection. In a nation where the citizens are called upon to take such a large part in the law-making process it is not a little surprising that such a small amount of attention has been given to the study of law by those who are not looking forward to the profession of practicing attorney. Fortunately for our country, lawyers were given from the beginning the supreme function of interpreting our law and a dominant voice in its making, due to the fact that our legislatures were filled almost exclusively with those who at one time or other had received training in law school or office. But times have changed, and lawyers now comprise a much smaller portion of those placed in responsible government positions and the average citizen is called upon frequently to determine questions primarily legal in nature. Greater responsibilities have been thrown upon those who are not lawyers or who have had no training even in the elementary principles of law. It is natural to ask what is being done to prepare citizens for this greater responsibility.

The average business man is called upon to deal constantly with questions that involve important issues of law. In most cases experience has shown that his only safe guide and counsellor is the reliable lawyer. But why should the business man have no opportunity to receive wuch training as would give him an insight into the elementary principles and the ordinary procedure of the legal code by which he is governed? Is it not as important that a man should know the elementary rules which determine the making of a contract, the employment of an agent, or the acquisition and control of property as it is that he should know the precise conjugation of French verbs or the plan of Alexander's campaigns? Yet the latter are looked upon as extremely essential in a liberal arts education, while the former is left to be gathered through the mistakes and errors of costly experience in life.

If the United States is to fulfil the prediction of Ex-President Eliot and become the most democratic of all democratic countries of the world, it would appear axiomatic that in its educational system there must be found place for the most thorough-going study of the principles and practices of modern governments and an accurate and painstaking analysis of our own system in its historical evolution, its present working and future possibilities. It would seem that if modern democratic devices are to result in great good to the community,

a larger proportion of our future citizens should receive training in the elementary principles of law. All cannot become government experts, nor can we hope to avoid the myriads of mistakes and misunderstandings which lead to endless litigation, but at least we can so provide that the simple mistakes due to profound ignorance on matters pertaining to government can in part be alleviated, and the superstitious awe, reverence and fear with which anything pertaining to law so often appears enshrouded can be slightly dispelled.

There are indications that the study of American Government will soon be advanced in dignity to a position where it may well deserve a place in every college curriculum instead of being relegated to the elementary school as a part of a course in "Civics." Secondary schools and colleges are becoming aware of the deficiencies in the courses which train for the highest responsibilities of citizenship. Some of our great universities in their highly developed departments of Political Science are attempting to remedy this apparent defect in our educational system. A few colleges have realized the need and their well organized departments are models which other colleges might do well to follow. The state universities in their rapid recognition of the possibilities in this field are setting a standard for the higher institutions of the country. They are impressing anew upon educational leaders the fact that colleges and universities have other responsibilities than the training of doctors, lawyers, preachers and teachers or the older type of cultured gentleman. These responsibilities are summed up in duties to the community and the nation at large; duties which make it incumbent upon every institution deserving the name college to aid progressively in the development of a more effective type of citizenship supported and strenghtened not only by a knowledge of government in its historical evolution and present form of organization but also by an intimate acquaintance with the practical operation of modern political institutions.

PRIMARY ELECTIONS IN MASSACHUSETTS 1640–1694

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The object of this paper is to describe the general electoral system of the Colony of Massachusetts Bay, and to call particular attention to the development and working of the system of primary elections by means of which, for nearly half a century, the freemen in the towns were enabled to nominate as well as elect "the General officers of the Jurisdiction."

The colonial history of Massachusetts covers a period of some 64 years, *i. e.*, from the granting of the charter by Charles I. on March 18, 1629, to May 14, 1692, when the Province Charter, granted in October 1691, by William and Mary arrived and Sir William Phipps became Governor of the Province.

The charter, sometimes called the patent, vested the government of the Company in a Governor, Deputy Governor, and eighteen Assistants and other officers to be chosen annually in a General Court or Assembly of the Company on the last Wednesday of Easter Term. It provided also that the Governor, Deputy Governor and Assistants might hold a court once a month or oftener, and that four "Great and General Courts of the Company" should be held yearly. It authorized the General Court or primary assembly of the Company to admit freemen to the Company, to elect and constitute officers for ordering the affairs of the Company; and "to make laws and ordinances for the good of the Company, and for the government and ordering of the said lands and plantation and the people inhabiting the same."

The first Governor, Deputy Governor and Assistants, were named in the Patent. After it had been decided to transfer the charter and the government to New England, a General Court was held in London on October 20, 1629, and four persons including Mr. John Winthrop (hitherto of the generality) and three of the Assistants who had been chosen at the first Court of Election in May 1629, were "put in nomination" for Governor by the Court. Winthrop was chosen "with

a general vote and full consent of the Court, by the erection of hands for the year ensuing." A Deputy Governor, and 18 Assistants were chosen also. Of the 20 Magistrates chosen in October 1629 only ten went out to New England in 1630, and one, John Endicott was already there. Two new Assistants were chosen to fill vacancies early in 1630, so that on the arrival of the colonists in Massachusetts in the early summer of 1630, the government of the Colony consisted of Governor Winthrop, Deputy Governor Thomas Dudley, eleven Assistants and a few freemen.

The government of the Colony was but little tinctured with democracy in the three years 1630–1632. The Court of Assistants met 26 times during that period, but the General Court only thrice. The first General Court, held in Massachusetts, was on October 19, 1630, "for the establishment of the Government." The record begins:

> It was propounded if it were not the best course that the Freemen should have the power of choosing Assistants when there are to be chosen and the Assistants from amongst themselves to choose a Governor and Deputy Governor, who with the Assistants should have the power of making laws and choosing officers to excute the same. This was fully assented unto by the general vote of the people and erection of hands.

This Court was evidently "run" by the Magistrates, who forebore to admit any of the 109 applicants for the freemanship; and in contravention of the charter continued themselves in office without holding an election. Thus early, and first of all by the Magistrates, was strain put upon the charter.

The Governor and Deputy Governor were re-elected, seemingly by the Assistants, at a General Court, held at Boston, May 18, 1631, when it was made "lawful for the Commons to propound any person or persons whom they shall desire to be chosen Assistants." It was also ordered that for the time to come, only church members should be "admitted to the freedom of the body politic." No Assistants were chosen at this Court. Owing to deaths and removals there were only seven Assistants in 1631.

The first Magistrates were generally men of substance and position, accustomed, as manorial lords and Justices of the Peace, in their old home to exercise a preponderant influence in the affairs of the community. Naturally, so long as the Commons made no objection, the Magistrates ruled as a benevolent oligarchy of superior persons

who were willing that the freemen should participate in the government to the extent of taking part in the annual election of Magistrates. Indeed evidence could be adduced that some of the Magistrates and elders, *i. e.*, Ministers wished to have the Magistrates hold office for life.

But the freemen began to murmur, and were allowed to participate in 1632, in the re-election "by the whole Court," of Governor, Deputy Governor and 7 Assistants, and the election of a new Assistant.

The records entirely corroborate Hutchinson's statement (History of Massachusetts Bay, i, 35) that "the Governor and Assistants kept the powers of government, both legislative and executive, very much in their own hands the first three years." "The people began to grow uneasy," Hutchinson goes on to say "and the number of freemen being greatly multiplied, an alteration of the Constitution seems to have been agreed upon or fallen into by the general consent of the towns; for at a general court of election in 1634, twenty-four of the principal inhabitants appeared as the representatives of the body of the freemen, and before they proceeded to the election of magistrates the people asserted their rights to a greater share in the government than had hitherto been allowed them, and resolved: That none but the general court hath power to make and establish laws or to elect and appoint officers, as governor, deputy governor, assistants, treasurer, secretary, captains, lieutenants, ensigns, or any of like moment or to remove such upon misdemeanor or to set out the duties and powers of their officers. That none but the general court hath power to raise monies and taxes and to dispose of lands, viz., to give and confirm properties, After these resolutions they proceeded to the election of magistrates."

Contemporary evidence as to the genesis of these resolutions and the radical orders enacted by the General Court of 1634, as a result of the uprising of the Freemen, is found in Winthrop's History (i, +152–3. Winthrop says:

The freemen deputed two of each town to meet and consider of such matters as they were to take order in at the same General Court; who having met, desired a sight of the patent, and conceiving thereby that all their laws should be made at the General Court, repaired to the Governor to advise with him about it, and about the abrogating of some orders formerly made, as for killing of swine in corn, etc. He told them, that when the patent was granted, the number of freemen was supposed to be (as in like corporations) so few,

as they might well join in making laws; but now they were grown to so great a body, as it was not possible for them to make or execute laws, but they must choose others for that purpose; and that howsoever it would be necessary hereafter to have a select company to intend that work, yet for the present they were not furnished with a sufficient number of men qualified for that business.

Such was Winthrop's view of the Commons and their place in the government of Massachusetts; a view that lacks not exponents and supporters even in our day. But the "deputed" freemen thought otherwise, and proceeded to revise the constitution by measures that were little short of revolutionary. Having had a sight of the patent, when the General Court was opened they first secured the revocation of the former oath of freemen, and the passage of a new form of oath. The former oath had practically exacted sworn obedience to the Magistrates. The new oath required the freemen to swear to be "true and faithful to the government," and contained no mention whatever of Governor or Assistants.

Then the General Court "agreed" that none but that Court had power "to choose and admit freemen" and adopted the declarations set forth above in the "resolutions" quoted from Hutchinson.

The election of Magistrates which followed the adoption of the resolutions marked the emergence of a freemen's party and scored a victory against the party of privilege and prerogative as represented by the Assistants.

It is more than probable the election was for the first time by papers, *i. e.*, ballots. Winthrop was relegated to the ranks of the Assistants, where he remained for two years, and Dudley was chosen Governor in his stead. Of the 9 Assistants chosen one was a new man. Then the court imposed a fine upon the Court of Assistants for infraction of the order of the General Court; passed an order forbidding trials without a jury; ordered that four General Courts should be held yearly; and repealed "the former orders concerning swine," and agreed that every town should "have power to make ordinances about swine as they shall judge best for themselves."

However, just before passing the order last mentioned, the General Court passed the following epoch making order:

It shall be lawful for the freemen of each plantation to choose two or three before every general court to confer of and prepare such business as by them shall be thought fit to consider of at the next court and that such persons as shall be hereafter so deputed by the

freemen of the several plantations to deal in their behalf in the affairs of the Commonwealth shall have the full power and voices of all the said freemen, derived to them for the making and establishing of laws, granting of lands, &c., and to deal in all other affairs of the Commonwealth wherein the freemen have to do so, the matter of election of magistrates and other officers only excepted, wherein every freeman is to give his own voice.

Thus the freemen established a representative system, that was not contemplated by the charter.

It is noteworthy that the freemen in 1634 asserted their rights to a voice, "in the affairs of the Commonwealth," rather than in the affairs of the Company. The transformation of the English corporation into an American Commonwealth had begun. Thence-forward the Deputies formed a co-ordinate part of the Government of the Colony, and shared generously in the development of its institutions and the control of its affairs.

Having found their voice in 1634, the body of the freemen, through their Deputies proceeded to develop a number of organs through which to express their mind and will. In the order of the General Court of May, 1634, which marks the starting point in the development of the House of Deputies, the right was explicitly reserved to "every freeman to give his own voice" in the election of Magistrates and other officers. After the introduction of ballots in 1634 or 1635, the election of Magistrates "with general consent by the erection of hands", which had been in vogue since 1629, seems to have fallen into complete desuetude.

The system of "proxy-voting" so called, was another innovation in the Colonial electoral system. It affords significant evidence of the readiness with which the early Colonists devised measures to meet new conditions.

The first step in the development of the system of voting by proxy, appears to have been taken in March 1636, when six of the outlying towns were given "liberty to stay so many of their freemen at home, for the safety of their towns, as they may judge needful, and that the said freemen that are appointed by the town to stay at home, shall have liberty for this Court (i. e., in May next ensuing) to send their votes by proxy." On March 9, 1637, the following order was passed by the General Court:

It shall be free and lawful for all freemen to send their votes for elections by proxy . . . which shall be done in this manner:

The deputies which shall be chosen shall cause the freemen of their towns to be assembled, and then to take such freemen's vote as please to send by proxy for every magistrate, and seal them up, severally subscribing the magistrate's name on the back side and so bring them to the Court sealed, with an open roll of the names of the freemen that so send by proxy.

As late as 1680, and probably even after the charter was revoked in 1684, the freemen might give his vote in person or by proxy at the Court of Elections. So that Court, originally the annual primary assembly of the Company, never wholly lost its character as such. It was the actual votes, not returns of the number of votes cast by the freemen, that the Deputies carried to Boston.

After 1636 Deputies were chosen by ballot by the freemen of the several towns and in 1643 it was ordered "That for the yearly choosing of Assistants, the freemen shall use Indian Corn and Beans, the Indian Corn to manifest Election, the Beans contrary."

As has been shown, the order of 1634, which established representation by deputies, allowed the freemen of each plantation to choose two deputies. An apportionment system was established in 1636, when, on September 6, it was "Ordered that, hereafter, no town in the plantation that hath not 10 freemen resident in it shall send any deputy to the General Courts; those that have above 10 and under 20, not above one; betwixt 20 and 40, not above two; and those that have above 40, three, if they will, but not above." In 1638–39 an order was passed providing that "No town should send more than two deputies to the General Courts." In 1681, Boston gained permission to send three Deputies to the General Court (5 Mass. Records, 305).

The fifteen years following the Uprising of the Freemen in 1634 was a period of controversey between Magistrates and Deputies over their respective powers in the conduct of the government. The exigencies of the struggle led to an unusual number of novel proposals and to several new devices and experiments. The Magistrates were particularly assiduous in their attempts to limit the number of deputies and to modify the system of elections.

A referendum relating to electoral procedure, was ordered by the General Court in 1641. It was embodied in an order passed on June 2, which set forth that "The freemen were growing to so great a multitude as will be overburdensome to the country," and "the way of proxies is found subject to many miscarriages." The Court pro-

posed, subject "to the advice and consent of the freemen," that "every ten freemen," in each town, should "choose one to be sent to the Court (of Elections) with power to make election for all the rest." The order provided that the Deputies should "carry the copy hereof to the several towns and to make returns at the next Court, what the minds of the freemen are herein, that the Court may proceed accordingly."

As there is no evidence that the proposed plan of voting by tens was ever tried, it would appear that "the minds of the freemen" were adverse to it; but no return of their votes can now be found.

In 1644, when the Massachusetts Magistrates and Deputies were at odds, the General Court, on November 13, passed an order which provided (1) that for a year neither Magistrates nor Deputies should "exercise a negative vote" upon the vote of the other, if "the freemen shall accept thereof;" and (2) that a trial shall be made for one year, "by choice of twenty deputies of the several shires to equal the number of magistrates chosen upon the day of election, the choice of them to be thus divided; Suffolk shall choose six; Middlesex six; and Essex and Norfolk being joined in one shall choose eight." In pursuance of this plan it was "further declared that every town shall forthwith, namely by the last of the next month, send in under the hands of their late deputies their vote assenting or dissenting to the proposition." It should be noted that the Colony was divided into four counties in 1643.

The records are silent as to the result of this referendum; but Winthrop in his History of New England (vol. ii, page 24) says "the greater number of towns refused it. So it was left for the time." But the Magistrates brought forward substantially the same plan again in 1645, when they asked the Deputies to concur in an order to refer to the freemen the question whether sixteen Deputies, *i. e.*, four for each county, with an equal number of Assistants, together with the Governor and Deputy Governor, should constitute the General Court. The proposed referendum failed to be authorized because the Deputies refused their concurrence. Their reply, found in the Archives but not in the printed records of the Court reads, as follows: "The deputies being in this particular well acquainted with the mind of their towns cannot consent to this way of lessening the deputies." The General Court on November 11, 1647, passed an act subject to acceptance by the freemen to limit the number of deputies to one from each town, but the freemen rejected it.

A still earlier referendum than any of those mentioned seems to have occurred in 1639. In November of that year, a joint committee of Magistrates and Deputies was instructed by the General Court "to peruse all those models which have been or shall be further presented concerning a form of government and laws to be established, and to take order that the same shall be copied and sent out to the several towns that the elders and freemen may consider of them against the next General Court." Finally, in that Court, on December 10, 1641, "the bodye of laws formerly sent forth among the Freemen was voted to stand in force."

The adoption of the "bodye of Liberties" in 1641, marked the triumphant issue of a movement initiated by the Deputies, in 1635, when "The deputies" as Winthrop tells us, "having conceived great danger to our state in regard that our Magistrates, for want of positive laws, in many cases, might proceed according to their discretions, it was agreed, that some men should be appointed to frame a body of grounds of laws, in resemblance to a Magna Charta, which being allowed by some of the ministers and the general Court, should be received for fundamental laws." The Bodye of Liberties was not simply a code of statutes. It was in some respects a prophetic type, (to use a term once current among zoölogists) of the Bill of Rights and Frame of Government adopted as the Constitution of the State of Massachusetts in 1780. The adoption of the Bodye of Liberties was one of the results of the Uprising of the Freemen in 1634.

By the Bodye of Liberties the freemen of every town were given "full power to choose yearly or for less time out of themselves a convenient number of fit men to order the planting or prudentiall occasions of that Town, according to Instructions given them in writing." The freemen soon developed by custom the practice of giving instructions to their Deputies as well as their Selectmen. So, a primitive form of the initiative, as well as the referendum and primary elections, became a recognized institution of the Colony within less than twenty years from the transformation of the General Court by the admission of the Deputies.

The Colonial system of primary elections was developed by a series of tentative measures in the period 1639–1649. It continued in operation, with but slight interruption, *e.g.*, the incumbency of Sir Edmund Andros as Governor in 1686–1689, and few alterations till the Province Charter went into effect in 1692.

The General Court ordered on March 3, 1636, that the Magistrates

to preside at the Quarter Courts, which had been established in 1635, should be appointed by the General Court and that "such persons as shall be joined as Associates to the magistrates in the said Courts, shall be chosen by the General Court, out of the greater number of such as the towns shall nominate to them."

At a General Court on December 13, 1636, it was ordered that all military men within the jurisdiction should

"Be ranked into three regiments;" and it was further provided that "each several regiment shall make choice of such men as they shall think most fit and safe for the service and trust of those places of Colonel and Lieutenant Colonel and present them by their Deputies to the next session of this Court; and for Captains and Lieutenants of the several companies the several towns shall make choice of some principal man or two, or three, in each town and present them to the council, who shall appoint one of them to the said office in each company."

So it came about that certain of the freemen might nominate associate justices, and officers in the militia four years before the scheme for nominating Magistrates began to take shape.

It should be noted, however, that the procedure employed in nominating militia underwent various changes before it was abolished in 1669.

Attention has already been called to the fact that when Winthrop was originally elected Governor in October 1629, in London, four persons were "put in nomination" by the Court, before the actual election took place. The term "nomination" does not emerge again in the records of the General Court, in connection with the choice of Magistrates, so far as I am aware, until 1640.

The first action taken towards the nomination of Magistrates seems to be that mentioned by Winthrop in his account of the election of 1639. "At this Court," he says, "there being want of Assistants the governor and other Magistrates thought fit (in the warrant for the court) to propound three amongst which Mr. Downing the governor's brother-in-law was one. . . . Yet the people would not choose him." Neither would the people choose either of the other two nominated by the Magistrates.

It seems probable that the propounding of new Assistants by the Magistrates in 1639 provoked the General Court on May 13, 1640 to take action as follows:

It is ordered, that at such general meeting in the several towns as

the deputies shall be chosen for the Generall Court in the 7th, 8th or 9th month, the said deputies being so chosen, shall propound to the freemen whom they would put to nomination for Magistrates at the next Court of Elections, and shall then set downe the names of such as shall be so nominated, and the certain number of votes which every man so named shall have, and shall make a true returne of the same at the next Generall Court and then the magistrates and deputies conferring all their returns for their several townes together, they shall take note of so many as have the greater number of votes from the several towns, till they have so many (if so many be returned) as will make up the full number of Assistants and whose names to be returned back by the deputies to the several towns that the freemen may consider of them against the next Court of Elections, to choose or refuse, as they shall see good; and at the said Court of Elections none shall be voted for new magistrates but such as shall come to nomination in the order aforesaid.

This order expired by limitation in 1641, when the Magistrates' futile scheme for the representation of every ten freemen by an elector to act for them at the Court of Elections was brought forward.

In 1642 an assembly of delegates to be chosen by the freemen in the towns to nominate candidates for the magistracy (in effect it was a nominating convention), was ordered to be held in Salem early in April 1643. The experiment seems never to have been repeated. In 1643, the order of 1640 was revived and the right of the freemen to make nominations without intervention of the deputies was expressly declared. In 1644 some new features were added. The procedure was simplified by orders passed in 1647 and 1649.

The order of October 17, 1649 provided that the freemen of every town should be called together by the constable some day in the last week of November yearly "to give in their votes in distinct papers for such persons as they desire to have chosen Assistants at the next Court of Elections not exceeding twenty in number." The sealed up votes of the freemen, were then to be carried by one appointed by them to the shire towns on the last Wednesday of March following. Each shire meeting was charged to choose "one Commissioner" to carry the votes on the second Tuesday of April to Boston "there to be opened in the presence of two magistrates if they be in town;" otherwise by the four Commissioners and "those twenty that have the most votes shall be the men, and they only, which shall be nominated at the Court of Elections." The shire commissioners were charged to make known, in writing, to the constables of the several towns in their respective shires the names of the 20 nominees. At the

election the candidates were named in the order of their relative votes, but precedence was given "in nomination on the day of election" to such candidates as had been Magistrates the year before.

The system of nominating candidates for Magistrates, as established in 1649, was not changed in essential particulars for 30 years; although the General Court changed the number of candidates to be chosen at the primary election from time to time. In 1658 the number was reduced from 20 to 14. In 1661 it was raised to 18, and in 1680 to 26.

In February, 1680, the General Court passed an act, limited in effect to one year, which did away with the assembling of the freemen's messengers in the shire towns and the choice of shire commissioners to carry the votes to Boston; but the shire-meetings and commissioners were revived by an act passed October 13, 1680, which systematized in a detailed way the whole scheme of primary elections. It is sufficient to say here that the procedure established in 1680 followed the general lines laid down in 1649, and appears to have been continued to the end of the Colonial Period.

The published records of the Courts of Elections contain no statements of the number of votes cast for Governor, Deputy Governor or Assistants; and such original papers as are found in manuscript in the Archives yield none. However, I have found in the Archives of Massachusetts six returns in manuscript relating to primary elections. Five of them have not been printed or described hitherto, so far as I am aware.

Five of the six returns, viz., for 1674, 1682, 1684, 1686 and 1690, as well as the returns for 1676, 1683 and 1692 which have already appeared in print, set forth the number of votes cast in nomination of Magistrates.

The return for 1692 is of especial interest by reason of its unique character. Not only is it the only return which affords a comparison of the number of votes in any year in the direct primary with the number cast at the succeeding election of Magistrates but it is the only return I have been able to find which shows the votes cast for Assistants at a Court of Elections. It is to be noted, however, that the number of votes for Governor and Deputy Governor and for 3 Assistants are lacking. For 21 Assistants, 12,249 votes were cast at the primary election on April 13, 1692, which equalled 76.1 per cent of the total vote for the same men at the election on May 4, 1692. The individual per cents of the votes received at the primary

to the votes received at the election ranged between 37.8 and 88.6.

The following table summarizes the results of Votes in the Nomination of Magistrates in the years covered by the eight returns, of the Shire Commissioners, described above:

YEAR	1674	1676	1682	1683	1684	1686	1690	1692
Number of Nominees	18	18	26	26	26	32	26	26
Number chosen at ensuing elections	13	12	20	20	20	20	20	20
Re-elected	13	11	19	18	15	18	18	19
Votes cast	16,924	15,874	21,048	225,60	22,509	23,208	18,126	14,522
Average vote	940	882	810	868	866	725	697	558
Maximum vote	1,271	1,320	1,163	1,246	1,269	1,203	972	749
Minimum vote	391	441	211	128	409	99	271	156

The foregoing statement shows a marked falling off in the maximum and average votes cast at the primary elections for Magistrates from 1676 to 1692. The lesser degree of interest shown after 1684 was doubtless owing to the uncertainty consequent upon the revocation of the charter in 1684. It should be noted, too, that in April 1692, when the last primary election was held, the early arrival of the new charter was expected. Still, inasmuch as the General Court in February 1690 had materially reduced the onerous restrictions on the suffrage, that had obtained since 1631, and had admitted over 900 freemen in the years 1690 and 1691, the size of the votes at the primary elections of 1690 and 1692 affords indubitable evidence of apathy among the freemen in both those years.

A very large proportion of elections to the magistracy were re-elections. Thus out of a total number of 145 nominees elected Magistrates, the table shows that 131 or 93.6 per cent were re-elected from the previous year. The figures for 1684 challenge attention. In that year out of 20 chosen, five were new men. This was a larger number of new men than in any year excepting 1680, when 8 new men were chosen, in order to bring the full number of Magistrates up to 20 in compliance with the commands of Charles II. Comparison of the nominations for 1684 with those of 1683 discloses: (1) the names of four men (two of whom were elected Assistants) who had not been nominated previously; (2) the disappearance of two unsuccessful candidates for nomination in 1683; (3) the election in 1684 of three nominees who had failed of election in 1683; (4) failure on the part of three nominees who had been elected in 1683 to

secure re-election in 1684. Moreover two of the Magistrates of 1683 had died in office.

One of the most striking facts regarding the incumbents of the Magistracy is their long tenure of office. In the period 1630–1692 there were 76 individuals chosen to the Magistracy for 821 terms in the aggregate. In 744 cases, or 90.6 per cent, the elections were re-elections. Occasionally candidates for the Magistracy were "left out."

Of the 76 individuals chosen to the Magistracy in the period 1630–1692 only one declined to serve. Thirteen, originally elected in England, served in 1630. Their aggregate terms amounted to 213 years or 16 years per man on the average. In 1630, two died and two removed from the Colony. Deducting their aggregate terms, viz., 10 years, leaves 203 for 9 men, whose service equalled 22.5 years on the average. One of the nine, Simon Bradstreet, served 61 years, 49 as Assistant and 12 as Governor and was named a Counsellor, although he did not serve, in the Province Charter. John Endicott, who died in 1665, outlived all the Magistrates of 1630, excepting Bradstreet. Endicott served 36 years in all, viz., 15 as Governor, 5 as Deputy Governor and 16 as Assistant. Others whose term of service amounted to 30 years or more were (1) Richard Bellingham, who died in office in 1672, having served continuously for 38 years, viz., 15 years as Assistant, 13 years as Deputy Governor, and 10 years as Governor; (2) Samuel Symonds, who died in office in 1679, having served 36 years, viz., 6 years as Deputy Governor and 30 years as Assistant, (3) Daniel Gookin, who died within a year of leaving office, was an Assistant for 34 years; (4) Thomas Danforth served 20 years as Assistant and 12 years as Deputy Governor, or 32 years in all; (5) Daniel Denison who died in office in 1682, had served continuously as Assistant for 30 years.

The aggregate terms for which the 75 Magistrates who served were chosen amounted to 838, or 11 terms per man on the average. Of the 75, however, there were 30 who served for 10 or more terms. The aggregate of their terms was 623, or 21 terms per man, on the average. Or differently stated, 40 per cent of the individuals chosen to the Magistracy filled 74.3 per cent of the terms of service for which they were chosen.

In the course of 62 elections 8 men were chosen Governor and 9 were chosen Deputy Governor.

To the establishment of the Colonial system of direct nominations,

the following results may be fairly attributed: First, the general system of choosing Magistrates, at large, was so supplemented by the holding of primary elections as to make the final choice by the freemen at the election itself, more deliberate, free and intelligent. Second, the primary elections resulted in the nomination of a relatively large number of candidates who had attained prominence as members of the House of Deputies and thereby commended themselves to the Freemen, as candidates for the magistracy. Thus the Freemen kept on hand a sort of preferred list of Deputies and Ex-Deputies from which they were accustomed to fill vacancies caused by death, disfavor or removal from the Colony.

The following facts support this view. Of the ten men in the first list of candidates nominated for the magistracy, viz., that of October 7, 1640, eight were Deputies in the General Court at the time of their nomination. Of that eight, six were subsequently elected Assistants, four of them within three years; although none of them received an election in 1641.

The eight returns of votes in Nomination of Magistrates summarized above, contain the names of 57 several nominees, of whom 45, or 78.9 per cent were or had been Deputies at the time of their nomination. Of the 57 nominees, 46 were chosen to the magistracy. Of the 46, no less than 78.3 per cent had served in the House of Deputies.

Further evidence that the system of direct nominations led to a considerable admixture of democratical leaven in the ranks of the magistracy is found in the fact that of the 55 new men elected to the magistracy in the period 1634–1692 inclusive, 45, or 81.8 per cent, had been members of the House of Deputies. At least 6 of the number had been Speakers of the House. Again, of the 8 new men chosen Assistants in 1680, 4, and of the 5 new men chosen Assistants in 1684, again 4 had been Deputies.

It is sufficiently clear, witness the utterances of Winthrop and Cotton, Dudley and Ward, that the leaders of the Puritan Exodus were not enamored of democratic ideals in respect to civil government. The speedy and decisive challenge to their oligarchical tendencies by an electorate, strictly limited to their church brethren, must have caused them not a little surprise,—a surprise as unpleasant as it was unexpected. The polity of the Bay Colony never became a pure democracy. But the dispassionate student of political institutions can hardly withhold a large measure of praise from the little band of British emigrants who, in the course of a single generation, through

the invention of new and the adaptation of old devices gave form and body to political ideals that many professed believers in democracy still hold to be impracticable or of little worth.

It is well nigh marvelous that a few pioneers battling with the wilderness and beset by enemies at home and abroad were able to achieve so large a measure of success in developing the initiative, the referendum, proxy voting, and a well-devised system of primary elections. The Freemen of Massachusetts Bay may have been religious enthusiasts and narrow idealists, but it cannot be denied that they were very practical idealists as regards political institutions.

It is hardly too much to say that the foundations upon which the present constitution of the State of Massachusetts, has been raised were laid by the Freemen of the Colony of Massachusetts Bay in the fifty years which elapsed between the demand "to see the Patent" in 1634, and the revocation of that Patent by the Crown in 1684. The achievements of the Freemen in that pregnant and fateful half-century foreshadowed and prefigured our American predilection for written constitutions, the American constitutional convention, and the separation of governmental powers according to the American plan into legislative, judicial and executive, all of them deriving their sanction from the "common assent" of the people.

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